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                   IN THE UNITED STATES DISTRICT COURT
 2
                       FOR THE DISTRICT OF ARIZONA
 3
        Barry Lee Jones,
                                        4:01-cv-00592-TMB
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                    Petitioner,
                                      )
 5
        VS.
                                        Tucson, Arizona
                                        November 6, 2017
 6
        Charles L. Ryan, et al.,
 7
                   Respondents.
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        BEFORE THE HONORABLE TIMOTHY M. BURGESS, DISTRICT JUDGE
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                        Transcript of Proceedings
                       Evidentiary Hearing - Day 6
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- 1 (On the record at 1:04 p.m.)
- 2 THE COURT: Everybody ready to go?
- 3 MR. SANDMAN: Yes, Your Honor.
- 4 THE COURT: You look like you're not quite ready to go
- 5 yet, you want to raise first. I know that look.
- 6 MR. SANDMAN: I do have that look. But, Judge, I
- 7 wanted to correct a statement I made on Friday.
- 8 THE COURT: Okay.
- 9 MR. SANDMAN: During the cross-examination of
- 10 Mr. Hazel, there was a lot of back-and-forth about the
- 11 adequacies of his funding request.
- 12 THE COURT: Yes.
- MR. SANDMAN: At one point I asked a question that
- 14 assumed as a fact that the Arizona Supreme Court had actually
- 15 adjudicated that funding issue adverse to Mr. Jones. I know I
- 16 said that.
- 17 THE COURT: Okay.
- MR. SANDMAN: And I was going through the file this
- 19 weekend and I noticed actually the Arizona Supreme Court only
- 20 denied discretionary review, which obviously is not an ad
- 21 adjudication. I suppose that's a way of saying that the -- the
- 22 adequacy of the funding request was at issue in his appeal, but
- 23 it was just a discretionary review that was denied by the
- 24 Arizona Supreme Court. So there was no actual adjudication of
- 25 that by the Arizona Supreme Court. I just wanted to make sure

- 1 I corrected that.
- THE COURT: Okay. Thank you for the clarification.
- 3 So, with that.
- 4 MR. BRACCIO: Your Honor, respondents would call Sonia
- 5 Pesquiera.
- 6 THE CLERK: If you would please raise your right hand.
- 7 SONIA PESQUIERA, WITNESS, SWORN
- 8 THE COURT: Please have a seat.
- 9 Mr. Braccio.
- 10 DIRECT EXAMINATION
- 11 BY MR. BRACCIO:
- 12 Q. Good afternoon, Mrs. Pesquiera.
- 13 A. Good afternoon.
- 14 Q. Would you state your name for the record.
- 15 A. Sonia Pesquiera.
- 16 Q. Spell your last name for us.
- 17 A. It's P-, as in "Paul," -e-s-q-u-e-i-r-a.
- 18 Q. Are you currently employed?
- 19 A. I am not.
- 20 Q. What do you do?
- 21 A. I stay home and take care of my grand-babies.
- 22 Q. Can you tell Judge Burgess about your career in law
- 23 enforcement.
- 24 A. I have a career of -- well, actually 34 years. 32 years in
- 25 law enforcement was with the Pima County Sheriff's Department.

- 1 After working Patrol, I went into the Criminal Investigations
- 2 Division, where I worked for or in the Crimes Against Children
- 3 Unit, dealing with physical/sexual abuse, child sexual
- 4 exploitation, missing and abducted children, and also adult sex
- 5 crime related cases.
- From there, I went to the Homicide Unit as a detective. I
- 7 was there for maybe four and a half years before being promoted
- 8 to Sergeant. Went back out to the field. Eventually came back
- 9 into CID and then was assigned to a unit. And then was later
- 10 assigned to the Crimes Against Children Unit as the supervisor,
- 11 and I was there for almost 14 years.
- 12 Then I was reassigned to Supervisor for the Homicide Cold
- 13 Case Unit, where we also did any kind of death-related cases
- 14 and officer-involved shootings. And that's when I retired,
- 15 September of last year.
- 16 Q. In this case, did you have a different name? At trial?
- 17 A. I had -- Rankin was my last name at the time.
- 18 Q. Then you subsequently married?
- 19 A. I married, yes.
- 20 Q. Were you the lead investigator and the case agent for the
- 21 Rachel Gray death and the subsequent arrest of Barry Jones?
- 22 A. Yes, I was.
- 23 Q. I'd like to talk about your investigation. Since your
- 24 deposition, have you had a chance to continue to review police
- 25 reports and witness statements in this case?

- 1 A. Some, yes.
- 2 Q. Would it be fair to say at the time of your deposition you
- 3 had not had a chance to fully review all the police reports and
- 4 witness statements?
- 5 A. Not all of them, no.
- 6 Q. It's been 23 years since the crime?
- 7 A. It has.
- 8 Q. Would you have known the facts of this case a little bit
- 9 better back then?
- 10 A. Yes.
- 11 THE COURT: I'm sorry, back when? At her deposition
- 12 or at the time --
- MR. BRACCIO: Great question.
- 14 BY MR. BRACCIO:
- 15 Q. Back in 1994, when this crime took place?
- 16 A. Yes.
- 17 Q. I'd like to pull up Exhibit 50.
- 18 Mrs. Pesquiera, I'm showing you what's previously been
- 19 admitted into evidence as Exhibit 50. This is a photograph
- 20 looking into the girls' bedroom of Barry Jones' trailer on the
- 21 right-hand side there. Do you recall this picture?
- 22 A. I do.
- 23 Q. Do you recall that you were asked questions in your
- 24 deposition about whether Rachel could have fallen on that
- 25 little table depicted here in Exhibit 50?

- 1 A. I do remember being asked questions in that area, yes.
- 2 Q. And whether that fall could have caused this massive
- 3 bruising around her forehead and the injury to her eye?
- 4 A. Yes.
- 5 THE COURT: I'm sorry. When you say, "table," which
- 6 table are you talking about? It looks like there's a table on
- 7 the right, it looks like there's a tooler's (phonetic) table on
- 8 the left.
- 9 THE WITNESS: There are two different photographs,
- 10 Your Honor. And the one to the right, there's a doorway there,
- 11 and then there's like a little table off to the side, to the
- 12 right-hand side.
- 13 THE COURT: Is that what you're testifying about in
- 14 regard to the fall?
- THE WITNESS: That's what I was questioned about.
- 16 That doorway leads into little Rachel's bedroom. And the other
- 17 photograph is like the living room area, when you first walk
- 18 into the trailer that's what you see.
- 19 THE COURT: Thank you. Go ahead.
- 20 BY MR. BRACCIO:
- 21 Q. I'd like to show you Exhibit 51.
- MR. BRACCIO: Before we pull that up, Your Honor, this
- 23 is the head shot from the autopsy of Rachel Gray. Would you
- 24 like the screens darkened out for this? I believe it's just
- 25 the head.

- 1 THE COURT: Yeah, I'd prefer to have the screens
- 2 darkened out, the public screens.
- 3 BY MR. BRACCIO:
- 4 Q. Were these the injuries that you were previously questioned
- 5 about?
- 6 A. Yes.
- 7 Q. Do you recall Rebecca's testimony in the Angela Gray trial?
- 8 A. Some, some of it, yes.
- 9 Q. Do you recall that Rebecca testified about where she found
- 10 Rachel the morning that she woke up, on Sunday -- excuse me --
- 11 Monday, May 2nd, 1994?
- 12 A. That it was somewhere near the doorway, is what I am
- 13 recalling.
- 14 Q. Did Rebecca testify to any other description beyond that
- she found Rachel near the doorway?
- 16 A. No.
- 17 Q. So do you have any evidence that Rachel was even near that
- 18 table the morning that she collapsed and died?
- 19 A. No, I do not.
- 20 MR. SANDMAN: Judge, just a point of clarification,
- 21 I'm sorry. Are we talking about testimony at Mr. Jones' trial?
- 22 THE COURT: No, I think his question actually
- 23 encompassed both. I think his first question was did she
- 24 recall testimony at Angela's Gray's trial, and then I think his
- 25 follow-up question: Do you recall any testimony at all?

- 1 MR. BRACCIO: Correct.
- 2 MR. SANDMAN: Could we have a reference to the date
- 3 and page number of this testimony that we're talking about, so
- 4 that we can understand it and maybe have an opportunity to
- 5 examine on it?
- 6 THE COURT: Well, I don't think he can give you a page
- 7 number to the question "any testimony at all." But maybe you
- 8 need to clear it up.
- 9 You're talking about two distinct events. First, you
- 10 started asking questions about testimony of Rebecca at the Gray
- 11 trial. And I am not sure if there's going to be a page and
- 12 reference if the question is there's an absence of any
- 13 testimony regarding the table. I think that's what her
- 14 testimony was. And then your follow-up question was: Do you
- 15 recall any testimony whatsoever?
- So I am not sure how I can give you a page and reference --
- 17 it's like proving a negative.
- 18 MR. BRACCIO: That's exactly right.
- 19 THE COURT: Go ahead.
- 20 MR. BRACCIO: So I believe Rebecca testified only
- 21 about the description of where she found that body in the
- 22 Angela Gray trial, which is where that comes from.
- 23 THE COURT: Right. You'll have an opportunity to
- 24 cross-examine. Okay?
- Go ahead.

- 1 BY MR. BRACCIO:
- 2 Q. During the course of your career, have you had training
- 3 with respect to interviewing child witnesses?
- 4 A. I have.
- 5 Q. And did you interview children throughout the course of
- 6 your career as a detective?
- 7 A. I did.
- 8 Q. Can children make good eyewitnesses?
- 9 A. They do.
- 10 Q. And in this case, did you ever discover a motive for the
- 11 Lopez children to come forward with this evidence of seeing
- 12 Barry Jones striking Rachel in his yellow van in the Choice
- 13 Market parking lot on May 1st, 1994?
- 14 A. A motive?
- 15 O. Correct.
- 16 A. No.
- 17 Q. Did the Lopez family receive a reward for their reporting?
- 18 A. No, they did not.
- 19 Q. Let's talk about the timeline in this case.
- 20 Do almost all of the crimes you investigate in your career
- 21 involve establishing a timeline of events?
- 22 A. It's important to establish a timeline and to get a history
- of, you know, various events surrounding different subjects,
- 24 yes.
- 25 Q. Was this case any different?

- 1 A. No, it was not.
- 2 Q. When you interview witnesses, generally, do you ever just
- 3 limit them to a certain day?
- 4 A. Limit them, no.
- 5 THE COURT: I'm sorry, I don't understand the
- 6 question.
- 7 BY MR. BRACCIO:
- 8 Q. So, for example, generally when you're interviewing a
- 9 witness, would you ever just limit the witness to the day that
- 10 the alleged crime occurred?
- 11 A. No, because we want an overview, we wouldn't be just
- 12 speaking about that day. Then we would be more precise and
- 13 eventually get to that certain day, yes.
- 14 Q. You'd want to know as much information as possible?
- 15 A. As much. And we want them to talk.
- 16 Q. Did you establish a timeline in this case based upon your
- 17 investigation and the witness interviews?
- 18 A. Yes, we did.
- 19 Q. Did you only focus on Sunday when Rachel was injured?
- 20 A. No, I did not.
- 21 Q. Do you recall that you questioned witnesses going back
- years before this crime?
- 23 A. Questioned them about years going back, yes.
- 24 Q. Did you obtain information on Barry Jones' background going
- 25 back years before this crime?

- 1 A. We did, yes.
- 2 Q. How about Angela Gray's background going back years?
- 3 A. Yes, we did.
- 4 Q. And Angela Gray's children going back years?
- 5 A. Yes, that is correct.
- 6 Q. Did you ever have evidence that Angela Gray's children
- 7 suffered significant injuries prior to moving in with Barry
- 8 Jones?
- 9 A. No, there was no evidence of that.
- 10 Q. During your investigation, did you receive information that
- in April of 1994, when Angela Gray and her children moved in
- 12 with Barry Jones, he would take Rachel alone with him anywhere
- 13 from two to five times in that month?
- 14 A. Yes, that came from his brother, Larry.
- 15 Q. In the weeks before her death, did you receive information
- 16 about one such trip where Rachel received two black eyes while
- 17 she was with Barry Jones alone?
- 18 A. Yes, we received information about that, yes.
- 19 Q. Can you tell Judge Burgess about that information.
- 20 A. We received information -- and some of them were
- 21 inconsistent -- from different subjects about her having two
- 22 black eyes that were -- that appeared older. So we asked about
- 23 those, and his brother, Larry, talked to us about that as well
- 24 and talked to me about that, having seen them and being
- 25 concerned.

- 1 I learned that there were some statements made that first
- 2 she tripped over a puppy, and then that a little girl hit her
- 3 with a rake, and then eventually she tells someone that Barry
- 4 is the one that hit her.
- 5 Q. Do you recall where this alleged incident was to have taken
- 6 place?
- 7 A. Initially they said that it happened at Larry's house. And
- 8 Larry and his wife, Lee Ann (phonetic), I believe, were kind of
- 9 upset about this, that they were making this claim that it had
- 10 happened there.
- 11 Q. And Larry didn't corroborate this story?
- 12 A. No, he did not.
- 13 Q. And Lee Ann Jones, Larry's wife, also did not corroborate
- 14 this story?
- 15 A. They were pretty angry about it being alleged that it had
- 16 happened there.
- 17 THE COURT: So I've given you a lot of leeway, but you
- 18 are asking a lot of leading questions. This is not a hostile
- 19 witness, this is your witness. So you're going to have to
- 20 formulate your questions in a non-leading fashion.
- MR. BRACCIO: Sure.
- 22 BY MR. BRACCIO:
- 23 Q. Is this the incident where Rachel's black eyes come from?
- MR. SANDMAN: I'm sorry, I didn't hear that. Excuse
- 25 me.

- 1 BY MR. BRACCIO:
- 2 Q. Is this the incident where Rachel received her two black
- 3 eyes?
- 4 MR. SANDMAN: I'm going to object to the form, and
- 5 foundation.
- 6 THE COURT: Well, I'm going to sustain the objection
- 7 as to the form.
- 8 BY MR. BRACCIO:
- 9 Q. Was the bruising around Rachel's eyes still evident at the
- 10 time of her death?
- 11 A. She had what appeared to be contusions to her eyes that
- 12 were at various stages of healing, and then contusions that
- 13 appeared fresher.
- 14 Q. And you indicated that Rachel said something about this
- 15 incident?
- 16 A. Which one?
- 17 Q. The two black eyes.
- 18 A. Yes, that she had talked about that.
- 19 Q. And what did Rachel say?
- 20 A. Eventually she did say that Barry had done this.
- 21 Q. Do you recall receiving information about how Rachel acted
- 22 afterwards?
- 23 A. They said that she was afraid of Barry.
- Q. Did many people witness these black eyes?
- 25 THE COURT: I'm sorry. Your question is how Rachel

- 1 acted afterwards; after what?
- 2 MR. BRACCIO: The incident where she received her two
- 3 black eyes.
- 4 THE COURT: Okay. Go ahead.
- 5 THE WITNESS: Can you ask me that question again?
- 6 MR. BRACCIO: Sure.
- 7 BY MR. BRACCIO:
- 8 Q. Did many people witness these black eyes on Rachel Gray?
- 9 A. Yes. Several people, yes.
- 10 Q. From your investigation and witness interviews, did you
- 11 also have information about Rachel's well-being on Friday,
- 12 April 29th, 1994?
- 13 A. Yes, we did.
- 14 Q. Did anyone describe Rachel as appearing sick or ill on
- 15 Friday?
- 16 A. No. Nobody said that she was sick on Friday.
- 17 Q. Was Rachel bathed on Friday night?
- 18 A. We received information that Rachel had been bathed by her
- 19 sister, Rebecca, and that Brandie was there as well.
- 20 Q. Did either of them report any bleeding or bruising on
- 21 Rachel's body?
- 22 A. They did not.
- MR. SANDMAN: Your Honor, I am sorry to interrupt. I
- 24 just want to -- maybe I should have made this objection
- 25 earlier. A lot of this testimony is based on hearsay, and I

- 1 have no objection to that if it's just to show what this
- 2 officer knew. But none of this hearsay was ever admitted at
- 3 Mr. Jones' trial, so it shouldn't be considered for purposes of
- 4 analyzing what the jury would have done with the verdict when
- 5 you're doing a Strickland analysis. So I don't have any
- 6 problem with the evidence insofar as it shows information she
- 7 thinks that she knew, but it's not --
- 8 THE COURT: And I don't take it as having been
- 9 established at trial, I take it as the officer's state of mind
- 10 at the time she was conducting the investigation. So thank you
- 11 for the clarification.
- 12 Go ahead. You may want to repeat your last question.
- 13 The last question was: "Did either of them report any
- 14 bleeding or bruising on Rachel's body?"
- 15 And I think you said: "They did not."
- 16 THE WITNESS: They did not.
- 17 THE COURT: Then there was an objection.
- 18 So go ahead with your next question.
- 19 BY MR. BRACCIO:
- 20 Q. Did anything else of significance happen Friday night?
- 21 A. I do recall an incident where a friend of Mr. Jones comes
- 22 over to the house and he says -- he talks about hearing Barry
- 23 yelling --
- THE COURT: Hearing who?
- THE WITNESS: Hearing Barry Jones yelling about Rachel

- 1 because she was crying and whining.
- 2 BY MR. BRACCIO:
- 3 Q. Did he indicate anything about getting the child away from
- 4 him?
- 5 A. He said something about "get her away from me."
- 6 Q. Do you recall, was that conversation overheard by anyone
- 7 else?
- 8 A. Angela was there, and it was -- Barry Jones was there, and
- 9 it was Ron St. Charles.
- 10 O. Do you recall if another neighbor overheard that
- 11 conversation as well?
- 12 A. There was a woman, I believe her last name may have been
- 13 DeVous. D-e-V-o-u-s, I believe. One of the neighbors there
- 14 had -- and I'm not sure of that last name.
- 15 Q. Just so we're clear, to the best of your knowledge as you
- 16 sit here today, there was no one that described Rachel as
- 17 appearing sick, vomiting, or heaving through that Friday night,
- 18 correct?
- 19 MR. SANDMAN: Object to the leading form of the
- 20 question.
- 21 THE COURT: Sustained.
- MR. BRACCIO: I'll rephrase it.
- 23 BY MR. BRACCIO:
- Q. Was there anyone who described Rachel as appearing sick or
- vomiting through Friday night, April 29th, 1994?

- 1 A. No. In fact, they said she was fine.
- 2 Q. Did your investigation also uncover evidence of Rachel's
- 3 well-being on Saturday, April 30th, 1994?
- 4 A. Yes, it did.
- 5 Q. How did Rebecca describe Rachel that day?
- 6 A. They were playing. They had breakfast, they were playing
- 7 games. They talked about, I believe, the other children having
- 8 to clean the yard, and that little Rachel stayed, pretty much,
- 9 indoors.
- 10 Q. Did Brandie also indicate anything about Rachel that day?
- 11 A. Brandie talked about the playing and that -- I believe she
- 12 talked about Rachel jumping up on her back wanting a piggyback
- 13 ride.
- 14 Q. Do you recall Brandie stating that Rachel kept stealing
- 15 bacon off of her plate?
- 16 A. That they were eating and she kept stealing bacon and then
- 17 that Rebecca was tickling her and things like that, yes.
- 18 Q. Do you recall that you interviewed Brandie Jones?
- 19 A. I did not interview Brandie Jones, no.
- 20 Q. Do you recall that a detective interviewed Brandie Jones?
- 21 A. Yes.
- 22 Q. Did Brandie indicate to that detective that she observed a
- 23 boy strike Rachel with a metal bar?
- 24 A. She did.
- 25 O. She said that to the detective?

- 1 A. I believe she said that to a detective, yes.
- 2 THE WITNESS: Can I clarify?
- 3 BY MR. BRACCIO:
- 4 Q. Go ahead, Mrs. Pesquiera. Do you want to clarify your last
- 5 answer?
- 6 A. Yes, sir, please. Only because Brandie Jones was
- 7 inconsistent in a lot of different statements, so I may have
- 8 that confused. So I'd have to look at something to be able to
- 9 refresh my memory exactly who she said it to.
- 10 Q. Do you recall that Brandie Jones did not tell the detective
- 11 about this story?
- 12 A. I would have to look at something to --
- 13 THE COURT: So the witness has just said she needs to
- 14 review her report in order to refresh her recollection. Do you
- 15 want to give her the opportunity to refresh her recollection?
- MR. BRACCIO: I do. It's Exhibit 1.
- 17 THE COURT: So, ma'am, you may read your report to
- 18 review, to refresh your recollection, but I don't want you
- 19 testifying from your report.
- THE WITNESS: Yes, sir.
- 21 THE COURT: So is this the report or her notes? I
- don't know what's up on the screen.
- MR. BRACCIO: Hold on.
- 24 MR. SANDMAN: Your Honor, these are Leslie Bowman's
- 25 notes.

- 1 MR. BRACCIO: I understand, I haven't gotten to the
- 2 page yet.
- 3 THE COURT: Then can we take these down, please?
- 4 Thank you.
- 5 THE WITNESS: Because there were two different trials,
- 6 there was different depositions, and different things that came
- 7 out at different times, so that's the only reason I am saying
- 8 that.
- 9 THE COURT: Sure. No, I understand. I think he's
- 10 trying to find your report.
- 11 MR. BRACCIO: I am.
- 12 THE WITNESS: And I don't know if it would be in my
- 13 report, that part of it.
- 14 THE COURT: Okay.
- 15 THE WITNESS: She may have said something like that in
- 16 a deposition or somewhere else.
- 17 THE COURT: This is Brandie?
- 18 THE WITNESS: Yes.
- MR. BRACCIO: I'll pull the document and hand it to
- 20 the witness and she can briefly review.
- 21 THE COURT: Fine.
- MR. BRACCIO: This is Exhibit 1 at Bates Number 793 to
- 23 812.
- 24 THE COURT: Before you look at your report, if I
- 25 understand your testimony, there were a number of places where

- 1 she might have made statements, she may have made statements to
- 2 you in your report, she may have had trial testimony, she may
- 3 have had deposition testimony, is that right?
- 4 THE WITNESS: Yes, sir.
- 5 THE COURT: And at some point did you have a chance to
- 6 review all of that testimony to understand the full scope of
- 7 her statements?
- 8 THE WITNESS: I have learned since then over all --
- 9 THE COURT: But not at the time.
- 10 THE WITNESS: At the time of the investigation, no.
- 11 THE COURT: So at the time of the investigation, what
- 12 you knew would be reflected in your report.
- 13 THE WITNESS: Correct.
- 14 THE COURT: Okay. Thank you.
- MR. BRACCIO: Your Honor, may I approach?
- 16 THE COURT: Just make sure opposing counsel knows the
- 17 page of -- the document, and the page and the line number that
- 18 you're going to be pointing her to.
- MS. SMITH: Your Honor, could I ask a favor? We
- 20 couldn't quite make out, I'm sorry, what you just said to
- 21 Detective Pesquiera. Is there any way to have that read back?
- 22 THE COURT: Well, I can summarize it for you.
- MS. SMITH: Thank you. I'm sorry. We just couldn't
- 24 hear.
- 25 THE COURT: She said there is -- what she knew at the

- 1 time of the events in question is reflected in her report, but
- 2 there has been a substantial amount of -- number of statements,
- 3 both of that witness and other witnesses, that have been
- 4 generated since then, in depositions and trials. So that, as I
- 5 understood her testimony, it's not -- well, it's what I think I
- 6 just said: What she knew at the time of the investigation is
- 7 what's reflected in her report, but there's been other
- 8 statements have been generated since then.
- 9 THE WITNESS: Correct.
- 10 MS. SMITH: Thank you.
- 11 BY MR. BRACCIO:
- 12 Q. Did you know at the time that Brandie Jones had claimed she
- 13 had observed a little two-year-old boy strike Rachel with a
- 14 metal bar?
- 15 A. I didn't learn about that until later.
- 16 Q. So if that information was not in Detective Ruelas'
- interview with Brandie Jones, you would not have known that,
- 18 correct?
- 19 A. I would not have known that.
- 20 THE COURT: When did you learn about that?
- 21 THE WITNESS: It wasn't until later. And I am not
- 22 sure which trial and which deposition, but over all later
- 23 learned that.
- 24 THE COURT: Did you learn about it at Mr. Jones'
- 25 original criminal trial?

- 1 THE WITNESS: That's what I am saying, Judge, I don't
- 2 remember exactly when I learned about it.
- 3 THE COURT: Okay.
- 4 BY MR. BRACCIO:
- 5 Q. Would that have been in the March 6th, 1995 defense
- 6 deposition with Brandie Jones?
- 7 A. It could have been, yes.
- 8 THE COURT: So we got a little side-tracked. You were
- 9 going to refresh her memory with her report.
- MR. BRACCIO: I believe her memory has been refreshed,
- 11 Judge. I don't think I need to refresh it from the report.
- 12 She indicated that that was not a story she knew through her
- investigation, so therefore that story is not contained in the
- 14 police interview of Brandie Jones.
- Does that make sense?
- 16 THE COURT: No, it doesn't. Because she testified
- 17 that she didn't -- you posed a question to her that she didn't
- 18 know the answer to without looking at her report, and there's
- 19 been a lot of back-and-forth in between, but I don't think
- 20 she's had a chance to look at her report.
- 21 Would you like to look at your report?
- THE WITNESS: What I am saying, Judge, is I don't
- 23 think it would be in my report because I didn't learn about it
- 24 until later, because I believe she may have said it in a
- 25 deposition or something like that.

- 1 THE COURT: Mr. Sandman, you look like you're about to
- 2 get up.
- 3 MR. SANDMAN: The statement that was actually -- that
- 4 Mr. Braccio took out of the exhibits to present to
- 5 Ms. Pesquiera was an interview conducted by a completely
- 6 different officer, Officer Ruelas. It wasn't a statement that
- 7 she took, in any event.
- 8 THE COURT: Well, if the parties are satisfied, I
- 9 think she's made clear that the operative fact that Mr. Braccio
- 10 is asking her about she didn't know at the time she wrote the
- 11 report. So, taking it from that point, next question.
- 12 BY MR. BRACCIO:
- 13 Q. And, Mrs. Pesquiera, you read the police reports and
- 14 witness interviews of other detectives in this case, correct?
- 15 A. Yes, I did.
- 16 Q. As part of your duties with being the case agent?
- 17 MR. SANDMAN: Objection. Leading form of the
- 18 question.
- 19 THE COURT: Sustained.
- 20 BY MR. BRACCIO:
- 21 Q. Did you read all the reports from other detectives in this
- 22 case?
- 23 A. I did.
- Q. Was that part of your duties as the case agent?
- 25 A. Yes, it is.

- 1 Q. Have you subsequently learned that Brandie claimed she
- 2 witnessed this two-year-old strike Rachel?
- 3 A. That is correct.
- 4 Q. Did you interview Barry Jones?
- 5 A. Yes, I did.
- 6 Q. Did Barry Jones corroborate this story?
- 7 A. No, he did not.
- 8 Q. Did you interview Angela Gray?
- 9 A. Yes, I did.
- 10 Q. Did Angela Gray corroborate this story?
- 11 A. No, she did not.
- 12 THE COURT: I'm sorry. Just to help me put this into
- 13 context, you might want to ask the witness when she conducted
- 14 these interviews in relation to the events in question.
- 15 BY MR. BRACCIO:
- 16 Q. Mrs. Pesquiera, do you recall when you interviewed Barry
- 17 Jones?
- 18 A. Yes.
- 19 Q. When did you interview Barry Jones?
- 20 A. It was that Monday, the 2nd, of when the -- the day of her
- 21 death.
- 22 Q. Do you recall the date that you interviewed Angela Gray?
- 23 A. I interviewed her two different times.
- 24 Q. And do you recall when those were?
- 25 A. Yes. One was on the 2nd, and I believe the second one was

- 1 on the 3rd.
- 2 Q. Did you also interview Stephanie Fleming?
- 3 A. Yes, I did.
- 4 Q. Do you recall when you interviewed Stephanie Fleming?
- 5 A. I think I interviewed Stephanie a couple of weeks later,
- 6 maybe even on the 19th or something like that, but I am not
- 7 sure exactly on the date. But it was after the incident.
- 8 Q. Who is Stephanie Fleming, if you recall?
- 9 A. Stephanie Fleming was a neighbor that lived just right
- 10 across and kind of in the corner area, and they lived in a
- 11 camper, the kind you put on the back of a pick-up truck, and it
- 12 was just on the ground.
- 13 Q. Do you recall who she was in relation to this two-year-old,
- 14 Ryan Fleming?
- 15 A. She was his mother.
- 16 Q. Did Stephanie Fleming corroborate this story?
- 17 A. No, she did not.
- 18 Q. Do you recall Isobel Tafe?
- 19 A. I do.
- 20 Q. Do you recall the statement she gave to detectives the day
- of Rachel's death?
- 22 A. I recall her saying something about just seeing her out
- 23 next to her trailer, where her trailer was.
- 24 Q. Do you recall if she commented about any bruising on
- 25 Rachel?

- 1 A. No, she didn't see any bruising at that time.
- 2 Q. Did she say anything else to detectives at that time?
- 3 A. Just that she saw her, I believe.
- 4 Q. Did you subsequently interview Isobel Tafe?
- 5 A. I did. I talked to her later.
- 6 Q. Do you recall when that interview took place?
- 7 A. It was days after, but I don't recall exactly when.
- 8 Q. Let's pull up Exhibit 66. Bates Number 5142.
- 9 Mrs. Pesquiera, I am showing you what's been previously
- 10 marked and admitted into evidence as Exhibit 66. Do you recall
- 11 this as the police interview that you conducted with Isobel
- 12 Tafe?
- 13 A. Yes, I do, and it says May 19th.
- 14 Q. Does that refresh your recollection that that interview
- 15 took place on the 19th of May?
- 16 A. Yes, it does.
- 17 Q. Do you recall what Isobel Tafe said when you interviewed
- 18 her?
- 19 A. Yes, I do.
- 20 Q. What did she say?
- 21 A. She talked about seeing Rachel, and then later that Brandie
- 22 came over to take Rachel, and that she talked about her looking
- 23 grayish, I believe, something like that.
- Q. Did she indicate anything about Rachel being scared?
- 25 A. She said that she said something about having to get back

- 1 or her dad or something like that would get mad.
- 2 Q. Do you recall when Isobel -- what day Isobel indicated this
- 3 was?
- 4 A. She said that it was the Saturday before detectives spoke
- 5 to her.
- 6 Q. Did Ms. Tafe indicate -- or did you have a belief about
- 7 Ms. Tafe's statement about that day?
- 8 A. I thought she was incorrect, I thought she was giving me
- 9 the wrong day.
- 10 Q. And why was that?
- 11 A. Because detectives spoke to her on Monday, and the incident
- 12 that we were discussing would have occurred on Sunday. So
- 13 that's why that was confusing to me, as to why she said
- 14 Saturday that she looked the way she described her.
- 15 Q. Did Isobel Tafe describe Rachel as looking sick?
- 16 A. She said she looked grayish or something like that, and
- 17 that she looked scared.
- 18 Q. Did she indicate if Rachel was vomiting?
- 19 A. No, she did not.
- 20 Q. Did she indicate if Rachel was heaving?
- 21 A. No, she was not.
- 22 Q. So, other than the statement by Isobel Tafe, did anyone
- 23 else describe Rachel as appearing sick through Saturday night?
- 24 A. Through Saturday night, no.
- 25 Q. Did others describe her as appearing well?

- 1 A. Yes, they did.
- 2 Q. Do you recall if Rachel ate dinner Saturday night?
- 3 A. They all said that they had dinner and they watched TV,
- 4 then she went to bed, and that she was fine.
- 5 Q. Did your investigation cover Sunday, May 1st, 1994?
- 6 A. Yes, it did.
- 7 Q. Did witnesses describe Rachel as appearing fine and playful
- 8 on Sunday morning?
- 9 A. On Sunday morning, yes.
- 10 Q. Did Rebecca indicate to detectives how Rachel appeared?
- 11 A. In the morning?
- 12 Q. Correct.
- 13 A. Yes, that she was playful and they had -- they played some
- 14 games, and I believe they were looking for something to eat,
- 15 but there was nothing to eat in the house at the time.
- 16 Q. Do you recall that Barry took several trips that day with
- 17 Rachel?
- 18 A. Yes, I do.
- 19 Q. How many trips did Mr. Jones take with Rachel?
- 20 A. Three.
- 21 Q. Do you recall where he went?
- 22 A. Yes.
- 23 Q. Where did he go?
- 24 A. We had information that in one of the trips that he went
- 25 looking for information from Ron St. Charles, who lived in a

- 1 camp somewhere out in the desert. And then that he had gone to
- 2 the Choice Market. And then that later on he had gone to the
- 3 Quik Mart.
- 4 Q. Did you receive evidence that at some point that day Rachel
- 5 appeared unwell?
- 6 A. Yes.
- 7 Q. When did Rachel appear sick?
- 8 A. The information that we had received was this was
- 9 approximately at 5:00 to 5:15, and that was from Stephanie
- 10 Fleming and some other people that she had there, because they
- 11 were having a barbecue.
- 12 Q. Do you recall if Michael Fleming was there?
- 13 A. Michael Fleming was there. A guy named Julian Duran and a
- 14 woman by the name of Dawn Kopp. K-n-o-p-p (sic), I believe.
- 15 Q. Just generally what did they describe seeing?
- 16 A. They said that they had seen -- first, it was Julian
- 17 talking about having seen a little girl go up underneath the
- 18 front part of the camper, the part that I believe goes over
- 19 like the truck. And there was some plastic thrown over it so
- 20 it was kind of hard to see, but if they ducked down and lifted
- 21 it up, they could see that a little girl was curled up in one
- of the corners near the plastic, and that she looked scared.
- 23 Q. Do you recall if they described her as dry heaving?
- 24 A. That was later, when she comes out of that little corner
- 25 area.

- 1 Q. Who described her as dry heaving, do you recall?
- 2 A. That was Stephanie Fleming.
- 3 Q. How else did Stephanie Fleming describe Rachel?
- 4 A. She said that she was cold and wet and a greenish color,
- 5 because she held her.
- 6 Q. What did Barry Jones do after that?
- 7 A. Stephanie Fleming talked about --
- 8 THE COURT: I'm sorry. What did Barry Jones do after
- 9 what?
- 10 BY MR. BRACCIO:
- 11 Q. After Stephanie Fleming was holding Rachel?
- 12 A. Yes.
- 13 THE COURT: Okay. Well, I'm sorry, but I think the
- 14 question presumes that Barry Jones was in a position to know
- 15 that this other person was holding her. So you might want to
- 16 just --
- 17 MR. BRACCIO: Sure.
- 18 THE COURT: -- I think ask her general questions so
- 19 that she can describe what happened.
- 20 BY MR. BRACCIO:
- 21 Q. At some point was Barry Jones alerted to this situation?
- 22 A. He was alerted to it by Julian Duran, who saw him. He said
- 23 he saw Barry walking around looking for something, that it
- looked like he was looking for something.
- 25 THE COURT: So, I'm sorry, again, I didn't understand

- 1 what situation you are talking about.
- 2 MR. BRACCIO: Where Julian Duran observes Rachel Gray
- 3 dry heaving, soaking wet, and looking greenish.
- 4 THE COURT: So you spoke with a witness that says she
- 5 saw Rachel looking ill?
- 6 THE WITNESS: Yes, sir.
- 7 THE COURT: And then this person was trying to comfort
- 8 her?
- 9 THE WITNESS: Actually held her and was -- yes.
- 10 THE COURT: What happened after -- in your
- 11 investigation, what happened after he -- she found Rachel in
- 12 this situation?
- 13 THE WITNESS: She said she's holding her, and that
- 14 Rachel is cold and wet. And that she is almost choking her,
- 15 because she's got her arms around her neck, around Stephanie
- 16 Fleming's neck, and that Rachel's legs are wrapped around her
- 17 waist really hard. And that she's trying to pull her away to
- 18 hand her over to Barry Jones, and she does.
- 19 THE COURT: Go ahead. You might want to pick up from
- 20 there.
- 21 BY MR. BRACCIO:
- 22 Q. What happened after that?
- 23 A. She hands her to Barry Jones, and Barry Jones walks away
- 24 toward his trailer.
- THE COURT: With Rachel?

- 1 THE WITNESS: Holding Rachel.
- 2 THE COURT: Thank you.
- 3 BY MR. BRACCIO:
- 4 Q. What happened after they got back to the trailer?
- 5 A. Later I learned that he had said that she was taking a nap.
- 6 THE COURT: To whom did he say that?
- 7 THE WITNESS: He says it to us later on in an
- 8 interview.
- 9 THE COURT: So you asked him about this event later
- 10 on, and he says he went back to the trailer and put her down
- 11 for a nap?
- 12 THE WITNESS: I learned that from, yes, Mr. Jones,
- 13 from Angela, later on, that she had been taking a nap, and the
- 14 fact that they had seen him going toward the trailer, yes.
- 15 THE COURT: So Ms. Gray and Mr. Jones confirmed that
- 16 she was taking a nap, he brought her back to the trailer and he
- 17 put her down for a nap?
- 18 THE WITNESS: That's what he had said, yes.
- 19 THE COURT: Well, you just told me it was he and
- 20 Angela Gray said that.
- 21 THE WITNESS: Right, Angela, at the time, she finds
- 22 out later, I believe, that she is taking a nap only from
- 23 Mr. Jones.
- THE COURT: So did she make any effort to
- independently confirm that she is actually taking a nap?

- 1 THE WITNESS: We asked her that, and she did not.
- THE COURT: So am I correct in assuming from your
- 3 investigation Ms. Gray didn't actually know whether or not
- 4 Rachel was taking a nap?
- 5 THE WITNESS: That is correct.
- 6 THE COURT: Go ahead.
- 7 BY MR. BRACCIO:
- 8 Q. What happened after that?
- 9 A. After she was taking a nap?
- 10 O. Correct.
- 11 A. What happens is Angela wakes up, and this is around -- she
- 12 says there was some conflicting times. After 6:30 to 7:00,
- 13 right around that time --
- 14 THE COURT: P.m.?
- 15 THE WITNESS: Yes, sir.
- 16 THE COURT: On Sunday?
- 17 THE WITNESS: On Sunday.
- 18 THE COURT: Go ahead.
- 19 THE WITNESS: She wakes up at that time and she comes
- 20 out and Barry tells her that Rachel is taking a nap and that
- 21 she had fallen out of the van and --
- THE COURT: Rachel, not Angela.
- THE WITNESS: That Rachel had fallen out of the van.
- THE COURT: Go ahead.
- THE WITNESS: And that she was taking a nap.

- 1 Then he asked Angela to go check on Brandie Jones.
- 2 BY MR. BRACCIO:
- 3 O. Did he send her out of the trailer?
- 4 A. He sent her out of the trailer to where Brandie had been
- 5 staying with a friend, Alisha (Phonetic), and I think her
- 6 mother was -- I forgot her mother's name.
- 7 Q. Does Joyce Richmond --
- 8 A. Yes, it was Joyce Richmond, and that's -- that's Eilisha's
- 9 mother, yes.
- 10 Q. You received this information from both the police
- interviews of Barry Jones and of Angela Gray?
- 12 A. Correct.
- 13 Q. What did Barry Jones do after that?
- 14 A. We learned that -- well, from Angela, that later on when
- 15 she was coming back, Barry Jones was coming up in the van with
- 16 Rachel.
- 17 Q. Where did Barry Jones take Rachel?
- 18 A. Barry Jones talked about taking Rachel to the Quik Mart.
- 19 Q. After he got back from the Quik Mart, how did Rachel
- 20 appear?
- 21 A. We learned that Rachel, according to Angela, was soaking
- 22 wet and that she was cold, her hair was soaking wet, and Angela
- 23 takes her into the house and changes her clothing.
- 24 Q. Was Rachel bleeding at that point?
- 25 A. She said that her head was soaking wet and, no.

- 1 O. What did Barry Jones tell everybody about that --
- THE COURT: I'm sorry. I just want to make sure I
- 3 understand. You're saying Ms. Gray told you that her hair was
- 4 wet, but she didn't notice any bleeding?
- 5 THE WITNESS: She -- she takes her into the house, and
- 6 we specifically ask her if she checked the injury, and she said
- 7 something about not wanting to irritate it, but then later
- 8 talked about putting washcloths on it.
- I don't recall if she specifically, when she took her
- 10 from the van, if she specifically saw blood at that time.
- 11 BY MR. BRACCIO:
- 12 Q. Do you recall when Rachel pulled back up in the van with
- 13 Mr. Jones if she had anything on her head?
- 14 A. She had a bag of ice.
- 15 O. And what did Mr. Jones tell Angela about where he had been?
- 16 A. He said that he had gone to see paramedics at the fire
- 17 station that was nearby.
- 18 Q. How did Rachel do as the night went on?
- 19 A. She progressively got worse. She started to -- Angela
- 20 talked about holding washcloths to her head, and that sometime
- 21 around closer to 8:00 o'clock she started to vomit. She also
- 22 complained of a lot of thirst and so she was giving her water,
- 23 also gave her milk, and that she continued to vomit.
- 24 Q. Did anyone else see Rachel that night in the trailer?
- 25 A. Her sister, Rebecca, saw her. And Barry Jones talks about

- 1 seeing her, yes, and seeing her vomit in the bedroom.
- 2 Q. Do you recall if there were other witnesses who came by the
- 3 trailer that night?
- 4 A. Yes.
- 5 Q. Who came by the trailer that night?
- 6 A. A guy by the name of Terry Shane Richmond. I believe it
- 7 was his girlfriend, a woman by the name of Kim Hillman. Alisha
- 8 (Phonetic), the little friend of Brandie Jones. And Alisha's
- 9 mother, Joyce Richmond. They came to the trailer.
- 10 Q. Do you recall if any of them talked about Rachel's
- 11 condition?
- 12 A. Yes, I do.
- 13 O. Who said what about Rachel's condition?
- 14 A. Well, Terry Shane Richmond talked about getting there, I
- 15 think it was later that night, at about 9:00 or something like
- 16 that, and he talks about seeing her and he sees that there is a
- 17 lot of blood. She was on a pillowcase and they could actually
- 18 see the blood. He talks about actually going over there to see
- 19 the injury on her head. And he said it was -- it was a big
- 20 one, it was a big injury. And he told them, Angela and Barry
- 21 Jones, that she needed to go to the hospital.
- 22 Q. Did Terry ask what happened to Rachel?
- 23 A. They did.
- Q. And what did Barry or Angela tell Terry?
- 25 A. They talked about her falling out of the van.

- 1 Q. Who?
- 2 A. That Rachel had fallen out of the van.
- 3 Q. Who said that?
- 4 A. Barry Jones.
- 5 Q. Okay.
- 6 A. Angela talked about it, too. They also said that -- that
- 7 Barry had taken Rachel to see the paramedics at the fire
- 8 station.
- 9 Q. Did Rachel eventually say anything later that night about
- 10 how she received these injuries?
- 11 A. She did.
- 12 Q. What did she say?
- 13 A. She said eventually that Barry --
- 14 THE COURT: To whom did she say this?
- 15 THE WITNESS: She was talking to her mother, Angela.
- 16 THE COURT: So you got this from interviewing Angela.
- 17 THE WITNESS: Yes, I did.
- 18 THE COURT: Go ahead.
- 19 THE WITNESS: I guess Angela kept asking her, asking
- 20 Rachel over and over again, what happened. And at this point
- 21 what I am getting from Angela is that she was very excited
- 22 about -- you know, kind of panicking about what had happened
- 23 and asking her what happened. And Rachel talks about -- that
- 24 Barry hit her with the shoe thing.
- 25 BY MR. BRACCIO:

- 1 O. Were there other witnesses to that statement as well?
- 2 A. The statement was overheard by Rebecca and I believe
- 3 Brandie overheard it as well.
- 4 Q. And do you recall, in Rebecca's interview, if she also
- 5 mentioned Rachel stating that Barry Jones had hit her with this
- 6 metal shoe thing?
- 7 A. Yes, they said "shoe thing," they also said a "black shoe
- 8 thing," and they also said a "metal shoe thing."
- 9 Q. And then Rachel died sometime in the early morning hours of
- 10 Monday, May 2nd, 1994?
- 11 A. That is correct.
- 12 Q. Do you recall how she was found that morning?
- 13 A. They talk about Rachel -- actually, Angela talks about
- 14 waking up in the morning, somewhere around 6:00 a.m. or so, and
- 15 going to check on her. And that she's on -- it was like a
- 16 little crib mattress that was thrown on the floor next to the
- doorway, and that she was there and that she could see her eyes
- 18 were rolled back.
- 19 Q. What did they do with Rachel after that?
- 20 A. They picked her up and they took her to the hospital.
- 21 Angela was screaming at Barry, "We need to go to the hospital."
- 22 And Angela said that Barry was telling her to give -- to do
- 23 CPR, perform CPR on Rachel, and he transported them to the
- 24 hospital and then he leaves from there.
- 25 Q. Did Barry Jones ever come back to the hospital?

- 1 A. He did not.
- 2 Q. Did he make any statements afterwards about Rachel?
- 3 A. He did.
- 4 Q. What did he say and who did he say them to?
- 5 A. After leaving the hospital, he ends up at Ron St. Charles'
- 6 camp, that's in the desert, and he talks to Ron St. Charles.
- 7 And then Ron St. Charles gives a statement about what Barry
- 8 said.
- 9 Q. And what did Barry say?
- 10 A. He was talking about how they're going to think that it's
- abuse, that he kept saying, "I'm sorry," "I'm sorry."
- 12 Q. Let me ask you a few questions about the Choice Market
- 13 parking lot in 1994. Do you recall that parking lot?
- 14 A. I do.
- 15 Q. Pull up Exhibit 65, Bates 4758.
- Do a jump to this because there may be.... The top picture
- 17 there, if you can blow that up at all.
- I'm showing you what's been previously admitted into
- 19 evidence as Exhibit 65. This is the Choice Market parking lot.
- 20 Do you recall this parking lot?
- 21 A. I do.
- 22 Q. We've heard testimony that the slope of this parking lot
- 23 was nearly level. Was that your recollection?
- 24 A. No.
- 25 Q. How would you describe this parking lot back in 1994?

- 1 A. Back then, I had this -- remember the little Dodge K-cars?
- 2 Is what I remember it being. And I remember it having a lot of
- 3 dips and potholes and things, so I would bottom out. I
- 4 remember driving onto it and bottoming out. But there were
- 5 different levels to it, to the parking lot, because it was
- 6 dirt.
- 7 Q. Is there also a slope to that parking lot?
- 8 A. There is.
- 9 MR. BRACCIO: I have no further questions.
- 10 THE COURT: Cross-examination?
- 11 MR. SANDMAN: May I have a moment, Your Honor?
- 12 THE COURT: Yes.
- 13 THE WITNESS: Could I get some water here?
- 14 THE COURT: You have none there?
- 15 Absolutely. Let me know if you don't have some, I'll
- 16 get you some.
- 17 THE WITNESS: Okay.
- 18 CROSS-EXAMINATION
- 19 BY MR. SANDMAN:
- 20 Q. Good afternoon.
- 21 A. Good afternoon.
- 22 Q. Ms. Pesquiera, I want to start out by going over some of
- 23 your direct testimony.
- 24 You testified here this afternoon that Rachel told her
- 25 mother that Barry gave her the black eyes, is that right?

- 1 A. Yes.
- 2 Q. Can we pull up from Exhibit 1 the interview starting May
- 3 2nd, at 0903 hours, Page 472. If you could go to Page 4.
- 4 Now, this is an interview, you're interviewing Angela,
- 5 correct, Rachel's mother?
- 6 A. Yes.
- 7 Q. And it's --
- 8 THE COURT: The date?
- 9 BY MR. SANDMAN:
- 10 Q. May 2nd, the day Rachel died, correct?
- 11 A. Correct.
- 12 Q. Right?
- 13 THE COURT: She agreed.
- MR. SANDMAN: Okay.
- 15 BY MR. SANDMAN:
- 16 Q. If you could blow up the last question and answer there.
- 17 You asked her -- you asked Angela how Rachel got the black
- 18 eyes. And she told you that according to her -- that would be
- 19 Rachel -- she'd got hit in the face with a rake.
- 20 Do you see that?
- 21 A. I do.
- 22 Q. Did you forget that statement before you gave your direct
- 23 examination?
- 24 A. No, I did not.
- 25 Q. Then let's go to 498. That would be Page 27. Then if you

- 1 could blow up sort of the bottom third of the page there.
- 2 She's again telling you in the statement that what she got
- 3 out of Rachel was that Rachel was playing outside and tripped
- 4 over a dog and got hit with a rake, correct?
- 5 A. Correct.
- 6 MR. BRACCIO: Judge, I am going to object to this line
- 7 of questioning. Mrs. Pesquiera stated on her direct that this
- 8 information came to Angela through Rebecca and Brandie.
- 9 THE COURT: Overruled.
- 10 You'll have an opportunity to correct this, if you think it
- 11 needs to be corrected, on redirect.
- 12 BY MR. SANDMAN:
- 13 O. If we could take a look at Exhibit 40.
- Now, this was an interview of Rebecca Lux dated October 31,
- 15 1994. Do you have a representative of the county attorney
- 16 there at that interview? Mitch Eisenberg?
- 17 A. There is Mitch Eisenberg, yes.
- 18 Q. Let's go to Pages 1185. I am not sure what page that is in
- 19 the exhibit. I'm sorry. Go to the next page.
- MR. SANDMAN: May I have a moment, Your Honor?
- THE COURT: You may.
- MR. SANDMAN: It should be 1187 to 88.
- 23 BY MR. SANDMAN:
- 24 Q. So, you see in this statement that Becky is being asked how
- 25 Rachel got the black eyes?

- 1 A. Yes.
- 2 Q. And Becky, like Angela, says that Rachel reported that she
- 3 got the black eyes from a broom, a girl was swinging a broom
- 4 and hit her between the eyes. She tripped over a dog at
- 5 Barry's brother's house. Do you see that?
- 6 A. I do see it.
- 7 Q. Now, I want to turn briefly, just briefly, to the Tafe
- 8 interview. Let's look at Exhibit 1 at 1843, first. Page 1843.
- 9 Now, you were asked a series of questions on direct
- 10 examination about whether Rachel looked well on Saturday, April
- 11 30th, is that correct?
- 12 A. Yes, sir.
- 13 Q. And in order to reach that conclusion, you had to interpret
- 14 Isobel Tafe's statement to you, where she said that she saw
- 15 Rachel on Saturday, you had to interpret that as her meaning
- 16 Sunday. Correct? Is that what you testified to?
- 17 A. I think I testified to different people seeing her on
- 18 Saturday, that she was well.
- 19 Q. Okay. So you agree with me then, correct, that it's
- 20 crystal clear, and was always crystal clear to you, and to
- 21 other detectives who interviewed Ms. Tafe, that when she
- 22 described Rachel's condition, she was talking about Saturday,
- 23 April 30th, correct?
- 24 A. Crystal clear, no.
- 25 Q. Let's -- can we look at -- I wanted to look at 1843 first,

- 1 which is the page I asked for. Just blow up the narrative.
- 2 First of all, this is your report, Ms. Pesquiera.
- 3 A. Yes, it is.
- 4 Q. And you wrote this report on May 19th, 1994, correct?
- 5 A. I am not sure if I wrote it on the 19th.
- 6 Q. Is the document dated May 19th, 1994?
- 7 You see where it says "date"?
- 8 A. It says dated on 5/2/94.
- 9 Q. Can you blow up the date on there?
- 10 A. 5/2/94. After my badge number.
- 11 MR. SANDMAN: I'm sorry. May I have a moment, Your
- 12 Honor?
- 13 THE COURT: Yeah.
- MR. SANDMAN: Your Honor, may I just approach the
- 15 witness?
- 16 THE COURT: Sure.
- 17 MR. SANDMAN: We can't seem to get the document up.
- 18 It's in Exhibit 1.
- 19 THE COURT: So just make sure you show opposing
- 20 counsel and that you identify it for the record, the exhibit
- 21 number and the page number.
- 22 (Discussion between counsel.)
- THE COURT: We're going to take a five-minute break.
- 24 10-minute break.
- 25 (A recess was taken from 2:06 p.m. to 2:30 p.m.)

- 1 THE COURT: Have we got our technical difficulties
- 2 worked out?
- 3 MR. SANDMAN: Yes. It was mostly my erroneous
- 4 notation on my document; but, yes, it's all worked out.
- 5 THE COURT: So it wasn't necessarily a technical
- 6 difficulty.
- 7 MR. SANDMAN: Exactly.
- 8 THE COURT: That's really good of you to fall on the
- 9 sword like that, I'm sure your staff appreciates it.
- MR. SANDMAN: So we'd like to look at Exhibit 1, Page
- 11 1856.
- 12 THE COURT: This is admitted?
- 13 MR. SANDMAN: Yes, sir.
- 14 THE COURT: Go ahead.
- 15 MR. SANDMAN: It's part of Exhibit 1. If you could
- 16 blow up the first half page.
- 17 THE COURT: This is a different exhibit than we were
- 18 looking at before the break.
- MR. SANDMAN: Yes, it is.
- 20 BY MR. SANDMAN:
- 21 Q. So where we left off, Ms. Pesquiera, is we were attempting
- 22 to determine your understanding, in May of 1994, whether Isobel
- 23 Tafe told you that Rachel was ill on Saturday, and, in fact,
- 24 you understood her to be saying that.
- 25 So the document we are looking at, you prepared this?

- 1 A. I did.
- 2 Q. About 23 years ago, in May of 1994?
- 3 A. Correct.
- 4 Q. And you summarize an interview that you had with Isobel
- 5 Tafe, a neighbor in the trailer park?
- 6 A. I did.
- 7 Q. And you reflect your understanding of the information you
- 8 received from Ms. Tafe in this report?
- 9 A. I did.
- 10 Q. And it was your understanding when you wrote this report
- 11 that Ms. Tafe had told you that she had seen Rachel Gray on
- 12 Saturday, April 30th, correct?
- 13 A. Correct.
- 14 Q. Now if we look at her report in Exhibit 81. By the way,
- 15 Ms. Pesquiera, before you interviewed Ms. Tafe, she had already
- 16 been interviewed by another officer in your department by the
- 17 name of Amado, is that correct?
- 18 A. I believe so, yes.
- 19 Q. And his report also documents that Ms. Tafe had seen Rachel
- 20 on April 30th, 1994, correct?
- 21 A. It was her report, and I would have to look at it again
- 22 just to make sure.
- 23 Q. Let's just take a quick look at Exhibit 66 at 4896. Down
- 24 at the very bottom. This is Officer Amado's report. He spoke
- 25 to Ms. Tafe on May 2nd, 1994, correct? Ms. Pesquiera?

- 1 A. She, yes.
- 2 Q. I'm sorry. Officer Amado is a she?
- 3 A. Yes, she is.
- 4 Q. Okay. And Ms. Tafe reported to her, Ms. Amado, or Officer
- 5 Amado, that she had seen Rachel on April 30th, not May 1st,
- 6 correct?
- 7 A. It says April 30th here, yes.
- 8 Q. I'm sorry?
- 9 A. It does say April 30th here.
- 10 Q. Okay. So are we clear, or are you clear, Ms. Pesquiera,
- 11 that Ms. Tafe saw Rachel on April 30th, 1994, not May 1st?
- 12 A. I'm clear that that's what she reported.
- 13 Q. Okay. And you're clear that you unambiguously documented
- 14 her report, correct?
- 15 A. I don't understand your question.
- 16 Q. When you wrote your report, you didn't say in there, "well,
- 17 I think she really saw the child on May 1st."
- 18 A. That is correct, I didn't say that.
- 19 Q. Let's take a look at Exhibit 81. Is this your May 19
- 20 interview of Ms. Tafe?
- 21 A. Yes, it is.
- 22 Q. On Page 2, she reports that she saw Rachel about 2:00 or
- 23 3:00 in the afternoon?
- 24 A. That is correct.
- 25 Q. And that was on a Saturday. It says that right at the top

- 1 of the page. Correct?
- 2 A. That's correct, that's a question I ask of her.
- 3 Q. Could you blow that back up again, please?
- 4 She described Rachel as looking sick on Saturday, April
- 5 30th, correct? And having a pale grayish color?
- 6 A. It says: Like she might be sick, wasn't natural, just a
- 7 pale grayish color.
- 8 Q. And she was similarly described to have an ill fitting -- a
- 9 pallor similar to that on Sunday, correct? The skin color she
- 10 had on Saturday, it continued over to Sunday, correct?
- 11 A. It was described as greenish, sometimes grayish.
- 12 Q. And when you received this information, you had already
- 13 decided Mr. Jones had committed this crime on Sunday, correct?
- 14 A. Correct.
- 15 O. And so you didn't think for a moment that Rachel actually
- 16 could have been sick from developing sepsis on Saturday and
- 17 that therefore that should be investigated further, correct?
- 18 A. I investigated it further, and I gathered other days and
- 19 information from different witnesses about other days.
- 20 Q. We'll go over this later, but you testified in your
- 21 deposition, did you not, that you didn't consider any other
- timeline for the infliction of Rachel's injuries other than
- 23 Sunday, May 1st. You testified under oath to that distinctly,
- 24 didn't you?
- 25 A. I would have to see that.

- 1 Q. We'll get to that.
- Now, at Page -- but you don't remember testifying to that?
- 3 A. I don't think that the medical information would have
- 4 curtailed my investigation to make it just focused on that
- 5 Sunday. Is that what you're saying to me?
- 6 Q. I'm asking if you remember -- did you read your deposition
- 7 before you came here today?
- 8 A. You had told me you were going to provide me with that, but
- 9 I don't have it.
- 10 Q. Did you ask the attorneys -- you're the case agent for the
- 11 attorneys behind me, correct?
- 12 A. I am.
- 13 Q. Did you ask them for a copy of your deposition?
- 14 A. No, I did not.
- 15 Q. Let's turn to Page 3 of the interview of Ms. Tafe, around
- 16 the middle of the page. If you could blow that up.
- 17 THE COURT: We've been jumping around. Because you
- 18 were just talking about her deposition, now you're talking
- 19 about this interview. So, again, for the record, this is the
- 20 interview of?
- 21 MR. SANDMAN: Isobel Tafe.
- THE COURT: Thank you. Go ahead.
- 23 BY MR. SANDMAN:
- 24 Q. So you see, I think it's the second question on the page,
- 25 you asked her if there was anything else that Ms. Tafe noticed

- 1 about Rachel, correct? And she said she had to go because she
- 2 didn't want her dad or someone to be mad. Or "they would be
- 3 mad." Do you see that?
- 4 A. (Reading:) It was something like, she says, I got to go,
- 5 and that, before someone gets, daddy gets mad, or someone gets
- 6 mad at her. And I says, okay. I says, you can come back when
- 7 you want to.
- 8 Q. So she referred to "someone" or "they" or her dad, correct?
- 9 A. "Someone" or "daddy" or "someone."
- 10 Q. Or "they."
- How long --
- 12 THE COURT: I'm sorry, you posed a question and she
- 13 hasn't answered yet.
- 14 THE WITNESS: I'm looking for the "they."
- 15 THE COURT: Why don't you just point it out to her.
- 16 I think, ma'am, he's looking at the last portion of
- 17 that sentence that you see highlighted there.
- 18 THE WITNESS: Yes, sir, I see it now. It does say
- 19 "they."
- 20 THE COURT: Next question.
- 21 BY MR. SANDMAN:
- 22 Q. Could you tell me, where did you document in your
- 23 investigation documents, exactly how long Rachel was out
- 24 wandering around the trailer park, let's say, before and after
- 25 Ms. Tafe saw her?

- 1 A. I don't know where that would be.
- 2 Q. It's not in -- it clearly is not in your investigative
- 3 reports, is it?
- 4 A. I'd have to look at that again to see that.
- 5 Q. Well, if it's not in there, then you didn't document it,
- 6 correct?
- 7 A. Are you telling me that it's not in there?
- 8 Q. I'm just asking you a question if it's not documented that
- 9 you did that. If it's not documented that you investigated how
- 10 long Rachel was out that day unsupervised by any adult, if it's
- 11 not in your record, you didn't document it, you never looked at
- 12 it, correct?
- 13 A. If it's not in there, then I didn't document it.
- 14 Q. And it's important that you document any kind of
- 15 significant aspect of your investigation, correct?
- 16 A. That is correct.
- 17 THE COURT: I'm sorry. I think we need to be a little
- 18 clearer. You were asking her two different questions. First
- 19 you were asking her if it's not in there, it's not documented.
- 20 But I think your other question was if you -- if it's not in
- 21 there, you didn't do it, right? You didn't investigate that
- 22 if -- if you investigated something, it's in your report, I
- 23 think is what he's trying to ask you. Is that an accurate
- 24 statement?
- 25 THE WITNESS: What I am saying, if I had done it, I

- 1 would document that I did that.
- 2 THE COURT: Right. Which also means if it's not in
- 3 your report, you didn't look at it.
- 4 THE WITNESS: I didn't document it, yes.
- 5 THE COURT: There is a difference between you didn't
- 6 document it and you didn't do it. If you did something, you'd
- 7 document it, right?
- 8 THE WITNESS: That is correct.
- 9 THE COURT: If you didn't do something, then it
- 10 wouldn't be in your report.
- 11 THE WITNESS: That is correct.
- 12 THE COURT: Go ahead.
- 13 BY MR. SANDMAN:
- 14 Q. Do you think it would be relevant to the investigation of
- 15 this case to have learned and document how long on Saturday
- 16 Rachel was wandering the trailer park without any adult
- 17 supervision on April 30th?
- 18 A. I had information that she was inside the trailer.
- 19 Q. Ms. Pesquiera, let's go back to the Tafe interview.
- 20 She is outdoors at around 3:00 o'clock -- she is without
- 21 adult supervision, correct?
- 22 A. Correct, until Brandie comes and gets her.
- 23 Q. And Brandie is not an adult, correct?
- 24 A. Correct.
- 25 Q. All right. And your answer, I think, stands, is that you

- don't know how long she was outside unsupervised before or
- 2 after Ms. Tafe saw her, correct?
- 3 A. I do not know that.
- 4 Q. And, by the way, if Rachel said that somebody might be mad
- 5 at her, do you think it's reasonable, you know, to expect that
- 6 maybe she knew if she was wandering around this trailer park
- 7 for maybe a little bit too long that somebody might be
- 8 concerned about her?
- 9 A. Is that reasonable? I guess if you pose it different ways,
- 10 yes, anything would be reasonable.
- 11 Q. Maybe she ran out the door and her mom said, you know, "You
- 12 come back in an hour," or maybe she yelled that to Brandie and
- 13 Rachel, correct? You don't know one way or the other.
- 14 A. I don't know that, no.
- 15 Q. Let's go back to Exhibit 50, where you started your
- 16 testimony earlier today.
- Now, you were asked some questions about, you know, whether
- 18 Rachel could have knocked her head into the little table shown
- on the page that's numbered 986, correct? Do you remember
- 20 those questions that Mr. Braccio asked you?
- 21 A. I remember the questions he asked, yes.
- 22 Q. And you supported your understanding of the evidence by
- 23 referring to some testimony in the Angela Gray trial, is that
- 24 right?
- 25 A. About which part though?

- 1 O. Well, when Mr. Braccio was examining you, he asked you
- 2 about your understanding of whether Rachel could have hit her
- 3 head on the little table shown on the right-hand picture, and
- 4 do you not remember that you made a reference to some evidence
- 5 in the Gray trial in answering that question?
- 6 A. I remember talking about the doorway area, yes.
- 7 Q. And do you not remember making a reference to your reliance
- 8 on evidence in the Gray trial to support your answer?
- 9 A. About what I just said, no. I remember talking about this
- 10 photograph, yes.
- 11 Q. That wasn't my question. During direct examination, in
- 12 explaining your understanding of where Rachel was lying and
- 13 where Becky picked her up, did you make a reference when
- 14 providing your answer to the testimony, Becky's testimony, in
- 15 the Gray trial? Do you remember that or not?
- 16 A. I remember saying that it was somewhere in that doorway
- 17 area.
- 18 Q. Ms. Pesquiera, that wasn't my question.
- 19 A. Okay. I am not understanding.
- THE COURT: I think what he is asking you is did you
- 21 learn some information from the Gray trial about this.
- THE WITNESS: That it was speculated that she could
- 23 have hit herself on the table?
- 24 BY MR. SANDMAN:
- 25 Q. Okay. Let's move on and let's look at the testimony that

- 1 Becky actually gave in Mr. Jones' trial. This is Becky's
- 2 testimony, and if you blow up Line 7 through 16.
- 3 Becky says she had to go to the bathroom, she saw Rachel on
- 4 the way, and that Rachel was blocking the doorway.
- 5 Did I read that correctly?
- 6 A. Correct.
- 7 Q. And if we look at Exhibit 50 again. That would be right
- 8 near where somebody could have fallen down right next to the
- 9 little table there, correct?
- 10 A. Correct.
- 11 Q. Okay.
- Now, you testified on direct examination about three trips
- in the van that Mr. Jones had with Rachel.
- 14 A. Correct.
- 15 Q. If I understood your testimony correctly, only two of those
- 16 trips that you identified took place before Rachel became sick.
- 17 I believe you testified that he went to the Quik Mart with
- 18 Rachel after Rachel was discovered sick at the Flemings'
- 19 residence. Correct?
- 20 A. Correct.
- 21 Q. And it's always been your understanding, as I believe you
- 22 confirmed in your deposition, that Becky reported consistently
- 23 that Mr. Jones and Rachel only went on two trips in the van
- 24 with Rachel on Sunday, May 1st. That was her consistent
- 25 statement four different times before Mr. Jones' trial,

- 1 correct?
- 2 A. During the investigation it was the two times, yes.
- 3 Q. And you remember that each time of the four times Becky was
- 4 asked about these two trips, she said that Rachel looked
- 5 unharmed after the two trips, correct?
- 6 A. Do I remember if Becky knew that she was unharmed after the
- 7 two trips?
- 8 Q. Nope, didn't ask that.
- 9 A. Okay.
- 10 Q. I just asked you a question about your understanding of the
- 11 record.
- Do you remember at your deposition you reviewed Becky's
- 13 pretrial statements that she gave to Officer Downing in early
- 14 May of 1994, you reviewed Becky's testimony at the Angela Gray
- 15 trial, and then you agreed, based on your reexamination of
- 16 those records, that what Becky reported was that Mr. Jones and
- 17 Rachel went on two trips in the van that day and that when
- 18 Rachel returned from the trips, at least to Becky, Rachel
- 19 looked okay? Correct?
- 20 A. Okay. So the first part of that question was that they did
- 21 go on two trips, and then she doesn't notice until after like
- 22 5:00 p.m. that she is looking sickly.
- 23 Q. Okay. Let's see what she said in the deposition.
- 24 A. That would be good.
- MR. SANDMAN: May I, Your Honor?

- 1 THE COURT: You may.
- 2 BY MR. SANDMAN:
- 3 O. This is marked for identification as Exhibit 60.
- 4 If you could turn to Page 136, Lines 18 through 34.
- 5 A. It goes up to Page 94.
- 6 Q. It's Page 136. Have you gotten there?
- 7 A. I only see it goes to Page 94. It goes up to Page 94.
- 8 Q. That's not the correct one. I'm sorry.
- 9 This should work better. (Handing witness document.)
- 10 A. 136.
- 11 Q. So at Page 136, Line 18, I had asked you this question,
- 12 quote: So consistent with Becky's testimony at the Gray trial,
- 13 she described to Detective Downing two trips that Rachel took
- 14 with Mr. Jones in the van and that she did see Rachel before
- 15 going to visit her friend Susie and Rachel was, quote, okay,
- 16 close quote. Do you see that?
- 17 A. Yes, I do. I answer: I do.
- 18 Q. You understand that at the Gray trial, Rachel testified at
- 19 the Gray trial and told Detective Downing that she had observed
- 20 the two trips, and that Rachel was okay, at least according to
- 21 her observation, after both trips.
- 22 A. Correct.
- 23 Q. And then when you testified before the grand jury, you had
- 24 Detective Downing's statement, did you not?
- 25 A. I believe I would have.

- 1 Q. And you told the grand jury, contrary to what Becky told
- 2 Detective Downing, you told the grand jury that Becky had not
- 3 seen Rachel after the second trip, correct?
- 4 MR. BRACCIO: I am going to object on the relevance of
- 5 this.
- 6 THE COURT: Hold on.
- 7 MR. SANDMAN: Well, you know, part of our theory of
- 8 this case is that the Government never liked the two-trip
- 9 evidence. Becky had made that statement four different times
- 10 before Mr. Jones' trial --
- 11 THE COURT: I'm going to overrule the objection. Go
- 12 ahead. You can answer his question. Do you need it repeated?
- 13 THE WITNESS: Yes, sir, please.
- 14 THE COURT: Okay.
- "Well, you know part of our theory of this --" Oh, I'm
- 16 sorry.
- "You understand that at the Gray --"
- "And you told the grand jury, contrary to what Becky told
- 19 Detective Downing, you told the grand jury that Becky had not
- 20 seen Rachel after the second trip, correct?"
- 21 A. I don't remember what I specifically said at the grand
- 22 jury, that would have been 23 years ago.
- 23 BY MR. SANDMAN:
- Q. Well, we did talk about it at your deposition, correct?
- 25 A. I'd have to see that. If you could refresh my memory.

- 1 Q. Just before I have you do that, do you remember testifying
- 2 at your deposition that you concealed from the grand jury that
- 3 Becky saw Rachel return from the second trip appearing
- 4 unharmed?
- 5 MR. BRACCIO: Objection, Your Honor. I don't believe
- 6 that's what the deposition says.
- 7 THE COURT: Well, the deposition will speak for
- 8 itself.
- 9 BY MR. SANDMAN:
- 10 Q. Page 140, Ms. Pesquiera.
- 11 A. 140. I'm on 140.
- 12 Q. Lines 20 through 24. The question was: And when you
- 13 answered that question, you concealed from the grand jury the
- 14 fact that Becky had told Officer Downing that Rachel was okay
- 15 before she went to see her friend Susie after the second trip;
- 16 correct? What was your answer?
- 17 A. I said: I did.
- 18 Q. Now, after you concealed that, isn't it true --
- MR. BRACCIO: Your Honor, I'm going to object to that
- and move for completeness, that he continue on to Page 142.
- 21 THE COURT: You'll have an opportunity to redirect.
- 22 BY MR. SANDMAN:
- 23 Q. Do you think you were confused when you testified in front
- of the grand jury about the time?
- 25 A. I do. I can't imagine myself ever saying, yeah, I

- 1 concealed something from the grand jury. I would think I would
- 2 have been confused.
- 3 Q. You were asked some questions about Rachel making a
- 4 statement that Barry had hit her with a shoe bar, correct? Do
- 5 you remember that?
- 6 A. That I was asked some questions? Your voice --
- 7 Q. On direct examination, do you remember you were asked some
- 8 questions about whether Rachel had said that Barry hit her with
- 9 a shoe bar? Some type of --
- 10 A. A shoe thing.
- 11 Q. A shoe thing. Okay.
- Now, that evidence was never admitted or disclosed to
- 13 Mr. Jones' jury at his trial, correct?
- 14 A. I don't recall if that was.
- 15 Q. When these -- when that statement was allegedly made, how
- 16 close was Rachel to going into a state of shock, do you know?
- 17 A. That would just be speculation, I don't know that.
- 18 Q. It could have been soon after that, correct?
- 19 A. I don't know.
- 20 Q. And did you also receive reports from both Angela and
- 21 Rachel's sister, Rebecca, that throughout that evening of
- 22 Sunday, May 1, that Rachel repeatedly reported that a boy had
- 23 hit her in the stomach with a metal bar?
- 24 A. I remember her talking about or that it was said that she
- 25 fell out of the van.

- 1 Q. Okay. Let's take a look at Exhibit 38.
- 2 Exhibit 38 is a statement that was given by Rebecca, Becky
- 3 Lux, on May 2nd, 1994. Do you see that at the top?
- 4 A. I do.
- 5 Q. That was the day Rachel died, correct?
- 6 A. Correct.
- 7 Q. This was the first statement that Becky gave, where she was
- 8 asked to recount the events of the day prior, correct?
- 9 A. Correct, to Detective Ferrier.
- 10 Q. And at Page 2, if you could blow up that question there.
- 11 Detective Ferrier is conducting this interview?
- 12 A. Correct.
- 13 Q. And he asked her, on Page 2: Uh, can you tell me when you
- 14 first found out Rachel had been hurt and how you found out?
- 15 And Becky reported Rachel saying that a boy had pushed her out
- 16 of the van and hit her with a metal bar in the stomach.
- 17 Do you see that?
- 18 A. I see it, yes.
- 19 Q. Now, I want to turn from your direct examination to some
- 20 other questions.
- 21 You testified in your deposition, didn't you, that it was
- 22 important in a homicide investigation to thoroughly investigate
- 23 all of the findings of the forensic pathologist who has
- 24 conducted the autopsy, correct?
- 25 A. I would think that's important, but I don't know if I

- 1 testified to that or not.
- 2 Q. Well, I don't need to refer you to your deposition. Do you
- 3 agree that it's important that as a lead detective in a
- 4 homicide case that you thoroughly examine and understand all of
- 5 the findings of the forensic pathologist who has conducted the
- 6 autopsy?
- 7 A. I agree.
- 8 Q. And early on in this investigation of this homicide of
- 9 Rachel Gray, you concluded that the injuries to Rachel had
- 10 occurred no sooner than the afternoon of May 1st, after
- 11 Mr. Jones woke up that day about 2:30 in the afternoon,
- 12 correct?
- 13 A. Whether I concluded that or whether I did more
- 14 investigation? Which I did.
- 15 Q. Nope, just the question I asked.
- 16 A. I believe that it happened on that Sunday, yes.
- 17 Q. My question was did you conclude early in your
- 18 investigation, for example, the day that Mr. Jones was
- 19 arrested, on the afternoon of May 2nd, had you concluded that
- 20 the injuries that Rachel suffered were inflicted on the day
- 21 prior, on Sunday?
- 22 THE COURT: I'm sorry. You're conflating two
- 23 different questions. The first question is did she conclude
- 24 that it happened on the afternoon of -- Sunday afternoon. I
- 25 think your response was yes.

- 1 THE WITNESS: It could be, yes.
- 2 THE COURT: I am not trying to suggest what the answer
- 3 is. I thought your answer was, yes, you concluded that it
- 4 happened on Sunday afternoon, the injury.
- 5 THE WITNESS: I concluded that that could have been,
- 6 but there was more investigation that I still had to do.
- 7 THE COURT: Then his second question is when did you
- 8 conclude that it happened on Sunday afternoon.
- 9 THE WITNESS: Well, I still needed to go and talk to a
- 10 lot of other people, and I did that. After the autopsy and
- 11 after gaining some more information, I knew I still needed to
- 12 go back and talk to people. So I can't tell you if at that
- point I had concluded that specifically, but I believed at the
- 14 time that it would have occurred on Sunday.
- 15 BY MR. SANDMAN:
- 16 Q. Could you tell us when and where did you document what
- 17 Dr. Howard told you about the timing of Rachel's injuries?
- 18 A. I did not. That wasn't part of his report at the time.
- 19 Q. Well, we started a couple of minutes ago talking about the
- 20 duty and the importance of the lead detective in a homicide
- 21 case becoming familiar with the findings of the forensic
- 22 pathologist. And you testified, I thought a few minutes ago,
- 23 that it was your responsibility to thoroughly investigate his
- 24 findings, Dr. Howard's findings.
- 25 A. Correct. But when they're doing the autopsy they don't

- 1 give you timing and things like that at the time. Especially
- 2 in their initial report, they won't.
- 3 Q. So that still leaves a question, does it not, that you
- 4 could ask Dr. Howard the day after the autopsy or the week
- 5 after the autopsy, or at some point ever, correct, you could
- 6 ask him to share with you his findings on the timing of
- 7 Rachel's injuries, correct?
- 8 A. Correct.
- 9 Q. And the fact of the matter is that you can point to no
- 10 documentation that you investigated those aspects of
- 11 Dr. Howard's medical findings that go to his conclusions about
- 12 the timing of Rachel's injuries, correct?
- 13 A. I do not believe I documented anything on those
- 14 conclusions, no.
- 15 O. And we've already, I think, agreed, or you testified, that
- 16 when you don't document an aspect of your investigation, that's
- 17 an investigation you did not conduct, correct?
- 18 A. When it comes to the findings of an autopsy, we allow the
- 19 doctor to provide that report. We don't go into what he is
- 20 going to say at a later time. In our report, we document the
- 21 fact that we went there, that we witnessed an autopsy, and
- 22 that's protocol. We go in there, we witness the autopsy, who
- 23 was present, what time it started, and photographs were taken,
- 24 things like that. We don't document any of the findings at the
- 25 time because there is so much that the doctor still has to do.

- 1 He still has to examine different tissue, things like that. So
- 2 he wouldn't have told me about the timing and things like that,
- 3 or I would not have documented that.
- 4 Q. I think my question was did you document. Do you know what
- 5 I mean by that?
- 6 A. I know what you mean by did I document.
- 7 Q. Okay. That means write it down, correct?
- 8 A. Correct, or type it.
- 9 Q. Did you document at any time, between the day of the
- 10 autopsy and Mr. Jones' trial, did you document any
- 11 investigation involving the timing, the medical timing, of
- 12 Rachel's injuries?
- 13 A. I documented the fact of other people talking to me about
- 14 what had happened to her starting, you know, days prior and
- 15 going back.
- 16 Q. Okay. Is your answer to my question no?
- 17 MR. BRACCIO: I am going to object to the form of this
- 18 question about what the medical conclusion even is, her
- 19 understanding of that.
- THE COURT: Well, if she knows, she knows. If she
- 21 doesn't know, she doesn't know.
- 22 So I'm going to overrule the objection.
- 23 Maybe you need to reframe your question.
- 24 BY MR. SANDMAN:
- 25 Q. In order to determine the timing of Rachel's injuries,

- 1 that's at least in part a medical question, correct?
- 2 A. It is a medical question, yes.
- 3 Q. And all I really want to know is did you document an
- 4 inquiry to a medical professional about the timing of Rachel's
- 5 injuries.
- 6 A. No, I did not document that.
- 7 Q. In your deposition, do you remember I asked you about what
- 8 you learned from Dr. Howard about the timing of injuries, and
- 9 your answer was that all he told you was that the injuries were
- 10 caused by blunt trauma and the manner of death was homicide.
- 11 Do you remember that?
- 12 A. Yes. Could I refer to that, too?
- 13 Q. That would be at Page 86.
- 14 THE COURT: Is this of her deposition?
- 15 MR. SANDMAN: Yes, Exhibit 60 at Page 86. This would
- 16 be at 86, Line 3.
- 17 THE COURT: I think he is pulling it up for you.
- 18 THE WITNESS: Oh.
- MR. SANDMAN: If you could blow up the first 15 lines
- 20 or so.
- 21 BY MR. SANDMAN:
- 22 Q. So my question was: Did you -- as the lead homicide
- 23 investigator in this case, did you investigate vis-a-vis
- 24 Dr. Howard whether there was medical evidence to support the
- 25 conclusion that Rachel's injuries were inflicted during the

- 1 time period that you've just mentioned, beginning on the
- 2 afternoon of May 1st and extending on into the time she died?
- 3 And your answer was, Ms. Pesquiera?
- 4 A. I went by what the doctor said.
- 5 Q. My question was: You went by what the doctor said, what
- 6 did the doctor say? And what was your answer?
- 7 A. That it was caused due to blunt force to the abdominal
- 8 area.
- 9 Q. If we could expand the rest of the dialogue there.
- 10 Then I asked you: What else? Referring to what else
- 11 Dr. Howard said. And your answer was what?
- 12 A. And the manner was homicide.
- 13 Q. And what else? The cause of death.
- 14 So when I asked you what you had done to investigate, all
- 15 you had to inform me of was that Dr. Howard reported that the
- 16 injuries were caused by blunt trauma and that it was a
- 17 homicide, correct?
- 18 A. Correct.
- 19 Q. So in conducting what you've described as all this
- 20 additional investigation, talking to people and so on, you did
- 21 that within the context of never investigating the medical
- 22 findings regarding the timing of Rachel's injuries, correct?
- 23 A. I can't say that that's correct because I can't say that I
- 24 would have never investigated the timing.
- 25 Q. Well, you've testified I think on several occasions in the

- 1 last 10 minutes that you never inquired of any -- you didn't
- 2 document an inquiry with any medical professional about the
- 3 timing of the injuries, correct?
- 4 A. I did not document.
- 5 Q. And you already said if you didn't document it, you didn't
- 6 do it, correct?
- 7 A. I was there during the autopsy, I watched what he was
- 8 doing.
- 9 Q. Let's go to Exhibit 45.
- Now, Exhibit 45 is a declaration submitted by Dr. John
- 11 Howard. I'd like you to blow up Paragraph 3.
- 12 Ms. Pesquiera, do you remember that we talked about this
- document during your deposition?
- 14 A. If it's in there then I'll agree to that. I don't remember
- 15 that though independently.
- 16 Q. Do you see there in Paragraph 3 that Dr. Howard says that
- 17 if petitioner's trial counsel had asked him whether the injury
- 18 to Rachel's abdomen that caused her death could have happened
- 19 more than 24 hours before her death, he would have answered the
- 20 question in the affirmative?
- 21 A. I see this, yes.
- 22 Q. Did you have any information to that effect before looking
- 23 at Dr. Howard's declaration?
- 24 A. Did I have information at the time of the autopsy?
- 25 Q. Did you?

- 1 A. Or when?
- 2 Q. At any time before looking at Dr. Howard's declaration.
- 3 Before your deposition.
- 4 A. If I had had information that he says if he had been asked?
- 5 I'm just not understanding the question then.
- 6 Q. Do you understand what Dr. Howard is saying in Paragraph 3?
- 7 A. I understand that he says if petitioner's trial counsel had
- 8 asked him.
- 9 Q. That he would have said that the injury could have happened
- 10 more than 24 hours prior to her death; and that would be before
- 11 May 1st, correct?
- 12 A. Correct. He says I would have answered the question in the
- 13 affirmative.
- 14 Q. Now, do you remember testifying in your deposition that you
- 15 didn't -- you weren't aware of this type of medical information
- 16 and that therefore you did not target your investigation on who
- 17 may have inflicted Rachel's injuries prior to the afternoon of
- 18 May 1st?
- 19 A. I don't remember the specifics of what I said, but I know
- 20 that I -- my investigation did include and did other days prior
- 21 to her death.
- 22 Q. Let's take a look at Page -- next page. Paragraph 7.
- 23 A. Do you have a page number?
- 24 Q. I'm sorry. Page 2, Paragraph 7.
- 25 Do you see there that Dr. Howard is reporting that Rachel's

- 1 chemistries were consistent with an injury that could have been
- 2 present greater than 24 to 48 hours before her death?
- 3 A. I see that, yes.
- 4 Q. Now, in your deposition at Page 99, Line 8, after reviewing
- 5 these very paragraphs of Dr. Howard's declaration, I asked you
- 6 the following question: And you didn't target your
- 7 investigation at potential suspects, for example, that may have
- 8 inflicted injuries on Rachel longer than 48 hours before her
- 9 death, did you? And your answer was?
- 10 A. I had no reason to believe that it had gone that long, so,
- 11 no.
- 12 Q. So you didn't, as you stated in your deposition, you didn't
- 13 target your investigation at any other suspects who might have
- 14 inflicted these injuries on Rachel 24 to 48 hours before her
- 15 death, did you?
- 16 A. I knew that I needed to go back and find out days prior to
- 17 where she was and to gather some of that information, and
- 18 whether I developed another suspect, no, I did not, based on
- 19 that information.
- 20 Q. You went out and looked for additional evidence against
- 21 Mr. Jones, but because you lacked the medical information about
- the timing of the injuries, you didn't consider any other
- 23 people who may have taken care of or had care and custody of
- 24 Rachel during earlier days, did you?
- 25 A. During my investigation, that was part of the questioning,

- 1 where she was, what she was doing, who she was with.
- THE COURT: Can I ask a question as a follow-up?
- 3 You've got that page open there.
- 4 So you're saying that you didn't have any reason to believe
- 5 that it had gone on more than a day, I take it is what you're
- 6 saying there.
- 7 THE WITNESS: Correct.
- 8 THE COURT: So if you had information that this injury
- 9 could have happened a few days before Sunday, would that have
- 10 had any impact on how you would have conducted your
- 11 investigation?
- 12 In other words, if there was medical evidence that showed
- 13 that it couldn't have happened on the day before, right, but
- 14 that it could have happened several days before, would that
- 15 have had an impact on how you conducted your investigation?
- 16 THE WITNESS: Yes, it would have. And I -- we did go
- 17 back several days, regardless of whether I had that information
- 18 at the time or not.
- 19 THE COURT: So the answer is yes.
- THE WITNESS: Yes.
- THE COURT: Go ahead.
- 22 BY MR. SANDMAN:
- 23 Q. Now, Ms. Pesquiera, in your deposition you testified that
- 24 if you had known Dr. Howard's opinion that the injuries could
- 25 have been inflicted more than 48 hours prior to death, you

- 1 said, and testified, quote -- this is at Line 17 and 18: If I
- 2 had more information, I would have expanded my investigation.
- 3 Do you see the questions starting at Line 2 of Page 100
- 4 down to Line 18?
- 5 A. I see those, and it went from 24 to 24 to 48, when you were
- 6 asking me, so.... My answer was I would have sought another
- 7 opinion from a pediatric specialist.
- 8 Q. And then I asked you if the pediatric specialist had given
- 9 you the same opinion as Dr. Howard, would you then, finally,
- 10 after that, had gone out and expanded the investigation into
- 11 Rachel's homicide to potential suspects that may have inflicted
- 12 those injuries 48 hours or longer prior to death? And what was
- 13 your answer?
- 14 A. Mr. Braccio had some objections, it says there. I don't
- 15 see what my answer is.
- 16 Q. At Line 17. At Lines 17 and 18.
- 17 A. If I had more information, I would have expanded my
- 18 investigation.
- 19 Q. So you would have done more than whatever you did do had
- 20 you had more precise medical information about the timing of
- 21 Rachel's injuries, correct? That's what you said under oath in
- 22 your deposition at Page 100.
- 23 A. I would accept that that's what I said, yes.
- Q. Now, is it true, Ms. Pesquiera, that you made a similar
- 25 assumption regarding the timing of the injury to Rachel's

- 1 genitals that you made with respect to the damage to her small
- 2 bowel; that you assumed, without getting any medical advice,
- 3 that occurred when Rachel was in the care and custody of
- 4 Mr. Jones on May 1st?
- 5 A. You're asking me if I assumed that the vaginal injuries --
- 6 Q. I am asking if you assumed those injuries occurred on May
- 7 1, 1994, in the afternoon of that day, based on the fact that
- 8 Rachel was in the care and custody of Mr. Jones on that date?
- 9 A. I don't recall if I said that. I assume that. But I
- 10 believe that those injuries had happened during that same time
- 11 period, yes.
- 12 Q. Well, let's take a look at Page 105 of your deposition,
- 13 starting at Line 10 through 23.
- 14 I asked you if you had any direct evidence that Mr. Jones
- 15 sexually assaulted Rachel on any day. Excuse me. I asked you
- 16 to concede that you had no direct evidence that Mr. Jones had
- 17 sexually assaulted Rachel.
- Do you see that? At Line 10 through 12?
- 19 A. Yes, sir.
- 20 Q. Then I asked you, at Line 16, I said: You have no evidence
- 21 whatsoever of any sort that he sexually abused her on May 1st
- 22 or at any other time; correct? And then what was your answer?
- 23 A. I had the evidence obtained at the autopsy that she had
- 24 trauma to her vaginal area and that she was in his care and
- 25 custody at the time that that occurred, yes.

- 1 Q. So we started with my question a few minutes ago, which is
- 2 that you made an assumption, without getting any medical
- 3 evidence from a medical expert such as Dr. Howard, that the
- 4 vaginal injury took place on May 1st based on the fact that, on
- 5 that day, on May 1st, Rachel was in Mr. Jones' care and
- 6 custody, correct? That's what you just testified to in your
- 7 deposition.
- 8 A. Correct.
- 9 Q. And then you further testified in your deposition that you
- 10 had zero evidence that Mr. Jones had committed a sexual assault
- 11 prior to May 1st, 1994, correct?
- 12 A. Did I say that in my deposition, you're asking?
- 13 Q. I'm asking you if you said that at your deposition.
- 14 A. I don't recall saying it, so I would have to look at
- 15 that --
- 16 Q. Well, let me ask you, isn't it true that you had zero
- 17 evidence that Mr. Jones had committed a sexual assault on
- 18 Rachel prior to May 1st?
- 19 A. I had no evidence that it was prior to May 1st, no.
- 20 Q. You were a sexual abuse investigator before you became lead
- 21 detective in this case?
- 22 A. Yes.
- 23 Q. And so you had interviewed children about sexual abuse?
- 24 A. I had.
- 25 Q. And did you ever conduct an interview of any of the

- 1 children living inside that tiny trailer about whether they had
- 2 information about any improper sexual touching going on in that
- 3 trailer between and amongst the children living there?
- 4 A. I had another investigators assisting me, but I did not.
- 5 Q. Could you tell us which investigator in this case
- 6 specifically interviewed any of the children living in the
- 7 trailer? That would be Rebecca and Johnny and Brandie. Which
- 8 one of your investigators, working under your leadership,
- 9 conducted a forensic interview concerning what those children
- 10 knew about any improper touching going on amongst and between
- 11 the children in the trailer?
- 12 A. I don't recall that coming up.
- 13 Q. And if there was such a record, it would be somewhere in
- 14 the sheriff's department file that we have in this case,
- 15 correct?
- 16 A. I knew that Detective C. J. Downing had interviewed Rebecca
- 17 Lux and she was a forensic interviewer at the time.
- 18 Q. And we all know, you know, I'm sure, Ms. Pesquiera, that in
- 19 that interview there is not a single solitary question posed to
- 20 Rebecca by Officer Downing about sexual abuse, correct?
- 21 A. I don't recall that, no.
- 22 Q. The record would show.
- 23 A. I don't recall that, that it would have anything like that.
- 24 THE COURT: I'm sorry. You don't recall it has that
- 25 or you just don't recall --

- 1 THE WITNESS: I don't recall that -- that that is in
- 2 the report or that that was part of the questioning by
- 3 Detective Downing?
- 4 THE COURT: So you're agreeing with his question.
- 5 THE WITNESS: I agree that I don't recall that, yeah.
- 6 THE COURT: Go ahead.
- 7 BY MR. SANDMAN:
- 8 Q. I'd like to show you Exhibit 1 at 890.
- 9 And while that's being pulled up, can you think of any
- 10 reason why you would rule out such an investigation that might
- 11 involve interviewing the children about what they knew about
- 12 any improper touching going on in the household?
- 13 A. Can I think of why I would rule that out?
- 14 Q. Can you think of a reason why you would rule out
- 15 investigating that question, whether there was any improper
- 16 sexual touching going on in the household between and among the
- 17 children?
- 18 A. If we had had information, no, I can't think of -- I can't
- 19 think of why I would rule that out.
- 20 Q. It's clearly not something that should have been ruled out
- 21 in this case, correct?
- 22 A. If we had had information, it wouldn't have been ruled out,
- 23 no.
- Q. What if you had no information? You actually had no
- 25 information, correct, that there was any sexual touching

- 1 between and amongst the children, right? You didn't have any
- 2 information about that.
- 3 A. At the time, no.
- 4 Q. Okay. So my question was, would there be any reason to
- 5 rule out an investigation in that direction to consider all
- 6 possible sources of the genital injuries apparent on Rachel's
- 7 body?
- 8 A. There would be no reason to rule it out, no.
- 9 Q. Okay. Fair enough.
- Now, I am showing you a copy of Exhibit 1 at 890, which was
- 11 an interview of Brandie Jones. If we could go on to the next
- 12 page, that interview. 892. Can you go -- there we go. If you
- 13 could blow up Lines 12 through 21.
- 14 There is a discussion here, or disclosure by Brandie, that
- 15 Rachel was scared when Johnny was in the room and she'd want to
- 16 sleep by the wall next to Brandie. Do you see that?
- 17 A. (Reading:) Yes, Rachel always was, like, scared, and she
- 18 always was sleeping by the wall next to me and stuff.
- 19 Q. Okay. And these questions to Brandie, "did you ever see
- 20 Johnny doing anything to Rachel?" that's certainly a question
- 21 that one of you -- one of your skilled investigators could have
- 22 asked if you hadn't ruled out conducting that sort of
- 23 investigation, correct?
- 24 A. They could have asked. They asked it here, yes.
- 25 Q. And the next page at Lines 13 through 25.

- 1 Now, did you know that these four kids were sleeping in
- 2 that tiny bedroom, the picture we looked at earlier, for at
- 3 least a period of time?
- 4 A. At one time or another, yes, that they were sleeping in the
- 5 same room.
- 6 Q. This is Brandie giving additional details about Rachel's
- 7 concern about Johnny and that when Johnny would leave the room
- 8 she would go back into her own bed, correct?
- 9 A. That's what it says here, yes.
- 10 Q. Then on the next page -- before I have you look at that,
- 11 did you know that Mr. Jones had to make a special sleeping area
- 12 for Johnny because there were concerns in the household about
- improper touching, Johnny improperly touching other residents
- in the household?
- 15 A. I didn't know until it was brought up here in Brandie's
- 16 deposition.
- 17 Q. And on this page we're looking at now, 894, Brandie was
- 18 asked if Johnny ever tried to do anything to her, to touch her,
- 19 and she said, yes, and that's when he got his built-on room.
- 20 Do you see that?
- 21 A. I see that, yes.
- 22 Q. This is information that you would want to know before you
- 23 decide that you've completed a thorough and complete
- 24 investigation in this case, correct?
- 25 A. Correct, I would want to question her further into this, to

- 1 determine what type of -- what she's talking about.
- 2 Q. And you can't find any of that out until you investigate,
- 3 correct?
- 4 A. Until we talk to her, yes, and ask her those questions.
- 5 Q. And we don't know where any of those leads would have taken
- 6 you, correct? Had you investigated.
- 7 A. It would just be speculation, yeah, if it wasn't done, I
- 8 wouldn't know.
- 9 Q. Exactly. It takes an investigation to really know what you
- 10 could find, correct?
- 11 A. I would have to investigate, yes.
- 12 Q. Can we take a look at Exhibit 30? If we can blow up the
- 13 bottom half.
- Do you remember who Zoly was?
- 15 A. Zoly?
- 16 Q. Zoly. Tell me who he was. Do you remember who he was?
- 17 THE COURT: He is asking you if you know who Zoly was.
- 18 THE WITNESS: Sorry. I was concentrating on what this
- 19 is.
- MR. SANDMAN: I'm sorry.
- 21 THE WITNESS: I knew that Zoly was an ex-boyfriend to
- 22 Angela, the mother. Rachel's mother.
- 23 BY MR. SANDMAN:
- Q. Okay. And she reported, Angela reported, to you that that
- 25 was an abusive relationship, that there was -- that Zoly

- 1 inflicted violence on Angela during that relationship?
- 2 A. Yes, that they had a domestic violence type of relationship
- 3 between the two of them.
- 4 Q. Now, did you have any concern in this case that Angela
- 5 might have been abusive, physically abusive, to any of her
- 6 children, including Rachel?
- 7 A. I don't recall if I had any concern. That would be
- 8 something that I would think about, yes.
- 9 O. You would think about that.
- 10 A. I don't remember if I had that concern though.
- 11 Q. Do you know, does your investigation file document a
- 12 conversation with Zoly to learn from him anything about
- 13 Angela's treatment of the children?
- 14 A. I -- I don't recall that.
- 15 Q. If it's not in the file, then it wasn't done, correct?
- MR. BRACCIO: I'm just going to object to this
- 17 document. This is Leslie Bowman's handwritten notes that were
- in her protected file.
- 19 MR. SANDMAN: It's an exhibit that's in evidence. I
- 20 just want to ask her a question.
- 21 THE COURT: You need to show it to her, she didn't
- 22 create this.
- MR. SANDMAN: I just wanted to ask her if she knew
- 24 anything about --
- 25 THE COURT: His point is why are you showing her this

- 1 document.
- 2 MR. SANDMAN: We can take it down.
- 3 THE COURT: Take it down and you can ask her
- 4 questions.
- 5 BY MR. SANDMAN:
- 6 Q. Did you receive any information at any time that there were
- 7 issues, sexual issues, between Johnny and Rachel?
- 8 THE COURT: I'm sorry. You were talking about Zoly.
- 9 You're done with Zoly, now you're --
- 10 MR. SANDMAN: Well, she said she didn't talk to Zoly,
- 11 so I want to know if she learned from any other source that
- 12 there were sexual issues between Rachel and Johnny.
- 13 A. Not sexual issues. You showed me one where Brandie is
- 14 talking about Rachel being scared and then climbing up into the
- 15 bed. I don't know if it referred to a sexual issue with
- 16 Rachel.
- 17 BY MR. SANDMAN:
- 18 Q. Fair enough.
- I want to touch just very briefly on Ms. Tafe again.
- 20 Do you remember in your deposition you testified that new
- 21 information that is discovered which might be relevant to a
- 22 child's medical condition should be provided to the
- 23 pathologist? And in this case that's Dr. Howard.
- 24 A. Do I remember saying that in my deposition?
- 25 O. Yes.

- 1 A. No.
- 2 Q. Do you agree that new information that you received during
- 3 your investigation that might be relevant to Rachel's medical
- 4 conditions should have been shared with Dr. Howard?
- 5 A. I would agree that if it's in my deposition then it would
- 6 be in there, yes. That's what I am saying, if I could refer to
- 7 it....
- 8 Q. Okay. Fair enough. Page 77, Line 7.
- 9 THE COURT: So you don't have to refresh her memory if
- 10 she is not your witness. If you just want to impeach her, you
- 11 can just read the testimony, you know. "On your
- deposition...," on whatever the date was, "...I asked you this
- 13 question, this was your answer."
- 14 BY MR. SANDMAN:
- 15 Q. Ms. Pesquiera, Page 77, Line 7, I asked you: If you find
- 16 additional information that might be relevant to the medical
- 17 condition, let's say, of a child after you first speak to a
- 18 forensic pathologist, would you relay that to the forensic
- 19 pathologist so they could have a full and complete
- 20 understanding of her medical condition at the time of her
- 21 death? And your answer was: If that is known, yes.
- 22 A. I agree.
- 23 Q. And you did acquire some potentially relevant medical
- 24 information from Ms. Tafe, did you pass that information along
- 25 to Dr. Howard?

- 1 A. That I received medical information from --
- 2 Q. You received some information from Ms. Tafe that Rachel
- 3 might be ill on April 30th, did you pass that information along
- 4 to Dr. Howard?
- 5 A. I don't recall passing that on, no.
- 6 THE COURT: Would it be documented somewhere if you
- 7 did?
- 8 THE WITNESS: Yes, sir, it would.
- 9 THE COURT: Where would it be?
- 10 THE WITNESS: In my supplement.
- 11 THE COURT: Supplement to your report?
- 12 THE WITNESS: My supplemental report, yes.
- 13 BY MR. SANDMAN:
- 14 Q. I want to talk to you a little bit about some of the
- 15 physical evidence in the case, namely, the clothing that was
- 16 worn by Rachel on Sunday, May 1st, and the clothing worn by
- 17 Mr. Jones on May 1st. Do you remember we talked about that in
- 18 your deposition?
- 19 A. Not specifically, no.
- 20 Q. Is it true you didn't collect or examine any of the
- 21 physical evidence in the case at the time it was collected in
- the trailer, Mr. Jones' trailer? Correct?
- 23 A. I did not collect evidence that was located in the trailer.
- 24 I was not present at the time, no.
- 25 Q. Do you agree that the clothing worn by the victim of a

- 1 physical or sexual assault at the time those assaults are
- 2 committed, that clothing may have critical forensic value?
- 3 A. About any victim, yes, that would be critical.
- 4 Q. And that clothing worn by the alleged victim could have
- 5 inculpatory or exculpatory value, correct?
- 6 A. Correct.
- 7 Q. In this case, should there have been a documented effort to
- 8 examine -- identify and examine the clothing worn by Rachel
- 9 Gray on the afternoon of May 1st?
- 10 A. Should there have been?
- 11 O. Should there have been?
- 12 A. If they had been located, yes.
- 13 Q. My question was should there have been a documented effort
- 14 to try and identify that clothing so that we know that the
- 15 police officers are looking for the clothing that Rachel wore
- 16 on May 1st.
- 17 A. Yes.
- 18 Q. And in this case, if there is no documentation indicating
- 19 that either you or your subordinates in this investigation
- 20 actually made an effort to identify Rachel's clothing she wore
- on May 1st, then that never happened, correct?
- 22 A. I know that they were looking for evidence in the house
- 23 that could be related. If you are asking me if -- so I don't
- 24 understand the question though. If it had been -- if they had
- 25 been looking for that evidence, would it be documented, or if

- 1 they had found the evidence?
- 2 Q. Let's take a look at Page 42, Line 12, of your deposition,
- 3 where we talked about this and I....
- 4 Let's look at 41 first. I'm sorry, Ms. Pesquiera.
- 5 If you look at Lines 41 (sic) through 24. We're talking
- 6 there about whether there had been an effort, a targeted
- 7 investigation, to identify and locate the clothing worn by
- 8 Rachel Gray on May 1st, correct?
- 9 A. So he indicated this report. Are you asking me about Line
- 10 24?
- 11 Q. Line 21, I asked you: If he was engaged in an effort to
- 12 identify and locate clothing worn by Rachel Gray on May 1st,
- 13 should that be indicated in his report? And your answer was?
- 14 A. It would be, yes.
- 15 Q. Then the question, starting at the bottom of Page 41 onto
- 16 42: And if there is an absence of any record in the report of
- 17 Detective Clark or any other officer involved in this homicide
- 18 investigation, if there's an absence of any record that anybody
- 19 attempted to identify or locate specifically the clothing worn
- 20 by Rachel Gray on May 1st, that would pretty much document that
- 21 it wasn't -- simply wasn't done; correct?
- 22 And your answer was: That could be, yes.
- 23 A. I thought, okay, Line 7: If there's an absence of a
- 24 record, question.
- 25 Q. Then your answer at Line 11 is: That could be, yes. If

- 1 it's not documented, it didn't happen?
- 2 A. "That could be, yes," is what I said, yes.
- 3 Q. And in your deposition, isn't it true that you were unable
- 4 to identify a single sexual assault case where there was not a
- 5 targeted and documented effort to identify and locate the
- 6 victim's clothing?
- 7 A. Are you asking me if I in the past --
- 8 Q. You have a long history of investigating sexual assault
- 9 cases, correct?
- 10 A. I do.
- 11 Q. I'll just ask you again: Can you think of any sexual
- 12 assault case where there was not a targeted, documented effort
- 13 to identify and locate the victim's clothing?
- 14 A. There would be a documented effort, yes.
- 15 O. So you cannot think of a case where there was not such an
- 16 investigation, correct?
- 17 A. Not off the top of my head, I can't think of a case like
- 18 that.
- 19 Q. Now, we'll never know whether there was exculpatory
- 20 evidence on Rachel's clothing, correct, that she wore on
- 21 Sunday, May 1st?
- 22 A. I don't know. I don't know that.
- 23 Q. And what about Mr. Jones' clothing that he wore on May 1st,
- 24 was there any documented effort to identify the clothing that
- 25 he wore on May 1st?

- 1 A. There was an effort made by Detective Clark at the house to
- 2 collect items.
- 3 Q. Did Detective Clark document that he was looking for the
- 4 clothing worn by Mr. Jones on May 1st?
- 5 A. I don't know if he specifically documented that in his
- 6 report without looking at it, no.
- 7 Q. In fact, in order to look for that evidence, Mr. Jones'
- 8 clothing or Rachel's clothing, somebody would have had to have
- 9 investigated what they were wearing on that day, correct?
- 10 A. Correct. That could be a way to look at that, yes.
- 11 Q. Is there any documentation that you know of that was
- 12 provided to Detective Clark when he was rummaging through the
- 13 house as to what either Rachel or Mr. Jones were wearing on May
- 14 1st?
- 15 A. At the time that he was rummaging through the house, no, I
- 16 don't know if there is anything like that.
- 17 Q. Now, you were, on the day that this search took place, on
- 18 May 2nd, you still had the cooperation of Angela Gray, correct?
- 19 You were interviewing her on May 2nd, even before you gave her
- 20 Miranda warnings, correct?
- 21 A. Did you just say "Rachel" or --
- 22 Q. I'm sorry. Angela. My apologies.
- THE COURT: Angela Gray.
- THE WITNESS: Angela.
- THE COURT: Yes.

- 1 THE WITNESS: Was I speaking to Angela Gray? Yes.
- 2 BY MR. SANDMAN:
- 3 Q. On May 2nd, she submitted to a lengthy interview, an
- 4 interview where you didn't even need to Mirandize her, or
- 5 didn't Mirandize her, correct?
- 6 A. That is correct.
- 7 Q. And you could have certainly asked her to identify the type
- 8 of clothing that Mr. Jones and Rachel were wearing on the day
- 9 prior, correct?
- 10 A. Correct.
- 11 Q. And the next day you continued to interview her during a
- 12 lengthy interview on May 3rd and could have asked her those
- 13 questions on May 3rd.
- 14 A. I could have, yes.
- 15 Q. And wasn't it also on May 3rd that Detective Clark
- interviewed a young child by the name of Ray Lopez?
- 17 A. I know he interviewed them, yes. I don't remember exactly
- 18 what day that was. It could have been May 3rd, yes.
- 19 Q. And Ray Lopez described that the person he saw in the
- 20 yellow van, the adult person he saw, was wearing a blue shirt
- 21 and a hat. Correct?
- 22 A. Correct.
- 23 Q. So now, on May 3rd, you know what Mr. Jones is wearing --
- 24 A. Well, let me go back. I don't remember the hat part, I
- 25 remember the blue shirt part, but maybe not the hat.

- 1 Q. You do remember he identified the driver of the van wearing
- 2 the blue shirt, correct?
- 3 A. Correct. And they talked about his hair, so that's why I
- 4 don't remember the cap part, or hat.
- 5 Q. Can we take a look at Exhibit 91 at 5.
- 6 Do you see the garment lying on the floor?
- 7 A. I do.
- 8 Q. In Mr. Jones' bedroom? The blue garment?
- 9 A. Correct, I see a garment there, yes.
- 10 Q. Does it appear blue to you?
- 11 A. It does here, yes.
- 12 Q. Do you know whether there was any documented effort to
- 13 convey the information from young Mr. Lopez to either you or
- 14 somebody else on your team to see if they could locate the
- 15 clothing Mr. Jones wore on May 1st?
- 16 A. When he was searching the trailer would have been the day
- 17 prior to having heard that from the child that said that he saw
- 18 him in the van.
- 19 Q. So the Pima County Sheriff's Department, as it was
- 20 operating in 1994, could learn about the garment being worn by
- 21 the alleged suspect on the day after the initial review of the
- 22 trailer, and then they would never go back, under any
- 23 circumstances, to collect additional evidence, is that what
- 24 you're testifying to?
- 25 A. No.

- 1 Q. They clearly could have gone back on May 3rd or May 4th or
- 2 May 5th to collect additional evidence that they had reason to
- 3 know about, correct?
- 4 A. Correct, he could have.
- 5 Q. So it doesn't matter that Mr. Lopez gave the statement
- 6 after the initial search of the trailer, does it?
- 7 A. I agree, it doesn't matter.
- 8 Q. I want to ask you -- well, before I do that. So we'll
- 9 never know whether the clothing worn by Mr. Jones on May 1st
- 10 had zero blood on it, correct?
- 11 A. No, I don't know if that would be possible at this point.
- 12 Q. We'll never know it.
- 13 A. I don't know if that -- no, I don't know that.
- 14 Q. Now, you're the lead detective.
- 15 A. Yes.
- 16 Q. So ultimately the failure to engage in a documented effort
- 17 to locate this physical evidence, that's on your shoulders,
- 18 correct?
- 19 A. That would come to me, yes.
- 20 Q. I want to ask you some questions about the blood found on
- 21 the van, and I'd like you to look at Exhibit 89 at Page 10.
- 22 A. The blood found on the?
- 23 Q. On the van. Do you remember that there was some of
- 24 Rachel's blood found on the carpet in the van?
- 25 A. Correct.

- 1 O. And we had an expert witness here last week -- I don't know
- 2 if you were here for that testimony from Stuart James -- and he
- 3 talked about item V6 -- V, as in "Victor," 6 -- and whether --
- 4 he thought that most probably that the blood on the carpet in
- 5 the van was a blood drop. And I wanted to ask you if that
- 6 carpet cut-out shown in this picture could have, in fact, been
- 7 blood that dropped from Rachel's head, for example, as she was
- 8 being held in her mother's arms in that seat on the early
- 9 morning of May 2nd, 1994?
- 10 A. You're asking me if it could have happened?
- 11 Q. Well, when you were a homicide detective, did you examine
- 12 physical evidence?
- 13 A. Yes.
- 14 O. And have to draw inferences about it?
- 15 A. Yes.
- 16 Q. You were comfortable with that?
- 17 A. Yes.
- 18 O. You knew how to do it?
- 19 A. Yes.
- 20 Q. And so my question was, using your experienced homicide
- 21 investigator lens, do you agree that a drop of blood sitting
- 22 just adjacent to the passenger seat in the yellow van,
- 23 Mr. Jones' van, could have been a drop of blood that spilled
- from Rachel's head as she was being held in her mother's arms
- on the way to the hospital on May 2nd, 1994?

- 1 A. I could not because the target, the landing surface for
- 2 which that blood drop hits or lands on, has a lot to do with
- 3 what that blood drop is going to do, how it's going to alter
- 4 that. And so, first of all, I couldn't say that it was a drop
- 5 at all. I'd have to look at the evidence myself and be able to
- 6 look at that and go back to refresh my memory. But also the
- 7 surface from which a bloodstain lands on, or, as you say, a
- 8 "drop," is altered because it's absorbed by the carpet and the
- 9 fibers.
- 10 Q. Okay. Well, I don't want to ask you anything about -- that
- 11 might elicit any testimony from you about your expertise in
- 12 characterizing blood evidence.
- I think your answer to my question was you can't infer that
- 14 drops of blood may have spilled from Rachel's head as she was
- 15 being transported to the hospital, that's not an inference that
- 16 would come to your realization, correct?
- 17 A. I can't infer, based on what you're showing me here and the
- 18 way you're asking me, no.
- 19 Q. Now I want to ask you about the importance of another
- 20 aspect of this investigation that you were a leader of.
- 21 Was it important to the investigation to try and document
- 22 each and every place that Mr. Jones told you and your
- 23 colleagues that he had been on the Sunday afternoon of May 1st?
- 24 A. Was it important to document that?
- 25 Q. Was it important to document and verify whether he had

- 1 actually gone to the various locations with Rachel as he
- 2 described to you when you interviewed him?
- 3 A. Yes, I would agree that that's true, yes.
- 4 Q. And Mr. Jones told you about a number of places he had been
- 5 that day. He told you he had gone to the Quik Mart late in the
- 6 afternoon after Rachel became sick, correct?
- 7 A. He did.
- 8 Q. And you directed Officer Ruelas to go out there and
- 9 interview the person that worked there that day, correct?
- 10 A. Correct.
- 11 Q. And she said -- I think her name was Petrilak, do you
- 12 remember her?
- 13 A. I remember that it was a female, yes.
- 14 Q. And she reported that she remembered Barry Jones, he was a
- 15 frequent customer there, and he came in and asked for a bag for
- 16 ice for Rachel's head, for a little girl's head. Do you
- 17 remember anything about that?
- 18 A. I do recall that.
- 19 Q. And do you remember that she said that she saw Rachel
- 20 sitting on sort of the stoop outside the front door of the
- 21 store?
- 22 A. That he had her come out and, yeah, sit on the curb.
- 23 Q. And she never reported seeing the little girl crying or
- 24 upset or frightened or anything like that, did she?
- 25 A. I don't recall her reporting that, no.

- 1 Q. In fact, even when Rachel was discovered sick by Stephanie
- 2 Fleming a little bit earlier from the trip to the Quik Mart,
- 3 when Stephanie called Barry over, he ran over, Rachel went
- 4 right to him willingly, didn't she, according to Stephanie
- 5 Fleming.
- 6 A. No, she did not.
- 7 Q. Let's take a look at -- when was the last time you looked
- 8 at the interview -- your interview of Stephanie Fleming?
- 9 A. I don't recall exactly. Maybe a few days ago.
- 10 MR. SANDMAN: Your Honor, this is in evidence as
- 11 Exhibit 72. It's an interview that Ms. Pesquiera conducted of
- 12 Stephanie Fleming on May 27, 1994.
- 13 BY MR. SANDMAN:
- 14 Q. Do you see that on the first page, Ms. Pesquiera?
- 15 A. I do.
- 16 Q. If we could direct your attention to Page 10.
- 17 THE COURT: This is already admitted?
- MR. SANDMAN: Yeah.
- 19 If you could blow up sort of the bottom third of the
- 20 page here.
- 21 THE COURT: Are you refreshing her memory to impeach
- 22 her because she denied this statement you're trying to elicit
- 23 from her?
- 24 MR. SANDMAN: I'd like her to read that paragraph --
- 25 BY MR. SANDMAN:

- 1 Q. -- and tell me whether this refreshes your recollection
- 2 that when Stephanie Fleming called Barry to come over to
- 3 retrieve Rachel, who was ill, she said: The man was concerned.
- 4 And then she also said: When I handed Rachel to him, she went,
- 5 she did go to him willingly. Do you see that?
- 6 A. I see that now, yes.
- 7 Q. Okay. So this is -- I am asking you this as sort of
- 8 your -- with your lead homicide detective hat on: Does Rachel
- 9 going to Barry willingly suggest to you...or does that suggest
- 10 that maybe he was not the person who just an hour earlier had
- 11 physically beat her and sexually assaulted her while she was in
- 12 his van?
- 13 A. Well, I was referring to that she says she was just holding
- onto her like she was choking her, she had her legs wrapped
- 15 around her, and she didn't want to let go.
- 16 Q. That's before Barry got there, right, Ms. Pesquiera?
- 17 A. And that's.... (Reading:) When I ran around the corner,
- 18 Barry was running towards us. Yeah. And the man was
- 19 concerned. Yes, I see that.
- 20 Q. And she did go to him willingly.
- 21 And my question was, which I would like you to try and
- 22 answer --
- 23 A. Okay.
- 24 Q. -- does Ms. Fleming's report to you that Rachel went to
- 25 Mr. Jones willingly sound to you like the description of a

- 1 child who had just, within an hour or so before this, been
- 2 physically beaten and sexually assaulted?
- 3 A. I would think that that's just her opinion.
- 4 Q. Okay. Then you would have dug a lot deeper into her
- 5 description there to try to find out more about that, correct?
- 6 You're apparently not willing to draw an inference from what
- 7 she in fact told you.
- 8 A. About which part?
- 9 Q. Let's go back to the Quik Mart. Officer Ruelas went there
- 10 to verify whether Mr. Jones had been there and you said that
- 11 had been done.
- 12 A. Correct.
- 13 Q. He also went to the Rural/Metro Fire Station to see if they
- 14 had any record of Rachel being there on the day prior, correct?
- 15 A. Correct.
- 16 Q. Mr. Jones never told the police he had been to Rural/Metro,
- 17 he told the sheriff's department detectives that he had
- 18 actually gone to the Quik Mart and ran into an EMT at the Quik
- 19 Mart, correct?
- 20 A. He talks about going to the Quik Mart and that there was an
- 21 EMT in there, yes.
- 22 Q. And it was someone wearing a brown shirt with -- he
- 23 described it better than I can now, but he described its unique
- 24 characteristics during his interview, what the EMT was wearing.
- 25 A. That it was brown, yes.

- 1 Q. And he said that the person was driving a civilian car,
- 2 correct?
- 3 A. I don't remember the civilian car part.
- 4 Q. He told you he had been afraid to go to the Rural/Metro
- 5 because he had just got out of -- he was driving on a suspended
- 6 license and didn't want to be rearrested for driving without
- 7 registration and license, correct?
- 8 A. I don't remember that portion.
- 9 Q. If it's in the statement, it's in there.
- 10 A. Okay.
- 11 Q. The other place that Mr. Jones said he had been was to the
- 12 Choice Market, correct?
- 13 A. Yes.
- 14 O. That's what he told sheriff's detectives.
- 15 A. Okay.
- 16 Q. And you testified in your deposition about what Mr. Jones
- 17 had told you about that visit, that it was around 4:00 o'clock,
- 18 and he had brought Rachel in the store and that she helped
- 19 carry the milk out of the store, correct?
- 20 A. I'd have to refer back to the deposition because I don't
- 21 recall that specific.
- 22 Q. So that would be at Pages 50, 51.
- 23 If you could actually just read to your.... Page 50, Line
- 7 through Page 51, Line 18.
- 25 Does that refresh your recollection that Mr. Jones had told

- 1 you he had gone to the Choice Market with Rachel?
- 2 A. (Reading:) We run up to choice, I get 10 cheese burritos,
- 3 a gallon of milk. And I say: Let me see. And so if you look
- 4 at my finger here -- So I ride over there, pick Rachel up, we
- 5 run up to choice.
- 6 Q. And then on the next page, or on Page 53, Lines 2 through
- 7 4, you confirm that he recounted going to the store between
- 8 4:00 and 4:30 on Sunday afternoon, correct?
- 9 A. (Reading:) He recounts going to see a friend, Ron, and
- 10 going to the Choice Market between 4:00 and 4:30 on Sunday
- 11 afternoon, May 1st. And I say: Yes.
- 12 Q. A little further down below, do you remember that that was
- 13 the same time that Norma Lopez said her children went to the
- 14 store? That's at Lines 14 through 19.
- 15 A. (Reading:) I've handed you what's marked as Exhibit 30.
- 16 See that interview conducted by Detective Clark of Norma Lopez
- 17 dated May 3rd, 1994? Correct. And if you would look at Page 1
- and then onto the very top of Page 2, do you see that Norma
- 19 Lopez is informing Detective Clark that her children went over
- 20 to the Choice Market at around 4:00 o'clock on Sunday
- 21 afternoon, May 1st? Yes.
- 22 Q. So at the deposition we went through Mr. Jones' statement
- 23 and Norma Lopez' statements, and we got both Mr. Jones and
- 24 Ms. Lopez saying that her children and Mr. Jones are converging
- 25 on the store around the same time.

- 1 A. I agree.
- 2 Q. Now, would you want to verify and actually document that
- 3 Mr. Jones went into the store and that Rachel seemed fine at
- 4 around 4:00, 4:30 in the afternoon on Sunday, May 1st?
- 5 A. Yes, I would look into that, yes.
- 6 Q. And there is not any indication anywhere in the sheriff's
- 7 department record that that was done, correct?
- 8 A. Not that I -- I don't recall that, no.
- 9 Q. And if it's not documented, it was never done.
- 10 A. If it's not documented, I wouldn't know about it.
- 11 Q. Because somebody actually working under your auspices could
- 12 have gone in the store and they could have obtained information
- 13 that Mr. Jones was in the store at around 4:00 or 4:30, near in
- 14 time to the Lopez kids, and that Rachel appeared fine and then
- 15 they didn't prepare a report, correct?
- 16 A. That could have been done, yes.
- 17 Q. And, in fact, one of the officers working under you that
- day, George Ruelas, who you just described going to the Quik
- 19 Mart and to Rural/Metro, he was not logged in on the radio that
- 20 day, was he?
- 21 A. I don't know that.
- 22 Q. Do you remember in your deposition that you reviewed the
- 23 radio log and you agreed that Officer Ruelas was operating off
- 24 the radio log on May 2nd?
- 25 MR. BRACCIO: Your Honor, I am going to object to this

- 1 line of questioning under relevance.
- 2 THE COURT: Overruled.
- 3 BY MR. SANDMAN:
- 4 Q. Do you remember testifying to that?
- 5 A. If it's in my deposition, I agree to that.
- 6 Q. Let's take a look at Page 61, Line 19 through 25 first.
- 7 You identified Officer Ruelas' report which identified his
- 8 badge number of 857, correct?
- 9 A. Correct.
- 10 Q. That portion of your deposition?
- 11 A. 857, yes.
- 12 Q. And then I asked you, at Line 23: Can you tell us whether
- 13 Mr. Ruelas has logged -- is he shown as logged into the radio
- 14 log on May 2nd, 1994? And then there is a long discussion
- 15 that's immaterial to this question. But at Page 63, Line 11, I
- 16 asked: Let me go back to the original question. Do you see
- 17 his badge number indicated on the radio log in Exhibit 35? And
- 18 what was your answer?
- 19 A. "I do not."
- 20 Q. And then I asked you, and I guess I'll ask you again, can
- 21 you rule out the possibility that Mr. Ruelas went to the Choice
- 22 Market on May 2nd, 1994?
- 23 A. I could say that it's not uncommon for detectives to not
- 24 use the radio, because sometimes they don't, so I wouldn't know
- 25 that by looking at the radio log, no.

- 1 Q. If you could try to answer this question yes or no,
- 2 Ms. Pesquiera.
- 3 A. Okay.
- 4 Q. If you can. If you can't then, of course, that's fine.
- 5 Can you rule out the possibility that Mr. Ruelas went to
- 6 the Choice Market and interviewed personnel there on May 2nd,
- 7 1994?
- 8 A. I can't rule that out.
- 9 Q. Now, do you think if Mr. Ruelas did go there and the
- 10 personnel said we know that Jones guy, he hasn't been here in
- 11 weeks, do you think Officer Ruelas would have documented that?
- 12 A. Do I think that?
- 13 Q. If Officer Ruelas had gone in the store and he had learned
- 14 from the employees that Mr. Jones had not been there on the day
- 15 prior, that would have contradicted Mr. Jones' statement to the
- 16 sheriff's department, correct?
- 17 A. I would assume he would have documented --
- 18 Q. Yeah, he would document --
- 19 A. Detective Ruelas.
- 20 Q. But we're not sure he would have documented information
- 21 favorable to Mr. Jones, correct? We don't know.
- 22 A. I can't say that, no.
- 23 Q. When did you eliminate Angela Gray as a suspect related to
- the infliction of Rachel's small bowel injury?
- 25 A. Based on interviews from the children and everybody that we

- 1 had gathered, and her own statement that she had been sleeping
- 2 through that time period and had gotten up and then that's when
- 3 she saw Rachel soaking wet and injured and then she takes her
- 4 back into the trailer.
- 5 Q. My question was when did you eliminate her as a suspect
- 6 related to the infliction of the injuries?
- 7 A. After we had spoken to the majority of some of the major
- 8 witnesses --
- 9 Q. Who are those?
- 10 A. Such as Angela herself, Barry himself, Rebecca, Brandie
- 11 Jones, and even the brother Jonathan.
- 12 Q. Are you telling us that if we go to the interview reports
- of the children -- let's put Ms. Gray on the sidelines for a
- 14 minute, because she may have some self-interest in this. But
- 15 if you go to the interviews you've just mentioned, of the
- 16 children, are you telling us that the Court will find targeted
- 17 questions of those children about the extent of the abuse by
- 18 their mother?
- 19 A. It was a totality of the interviews.
- I don't understand your question. If you're asking me --
- 21 ask me again, because it's a compounded kind of thing.
- 22 Q. Well, I think where we started was I asked you when you
- 23 decided Rachel -- excuse me -- Angela Gray was no longer a
- 24 suspect related to the infliction of the injuries, and you said
- 25 it was based on a bunch of interviews. Is that what you said?

- 1 A. It was based on interviews that we had gathered of
- 2 different people, yes.
- 3 Q. And I think you had identified the people as Johnny and
- 4 Becky and Brandie. Did I leave anybody out?
- 5 A. Angela herself. Barry Jones.
- 6 Q. And if we look at any of those interviews, are you saying
- 7 that we will find in those interviews targeted questions about
- 8 the extent of any abuse that Angela may have inflicted on any
- 9 of the children?
- 10 You're saying that's actually in those interviews? That's
- 11 what I want to know.
- 12 A. I don't recall that, no. I don't recall specifically if
- 13 it's in those interviews.
- 14 THE COURT: Are you asking if the interviews touched
- 15 upon that?
- MR. SANDMAN: Yes.
- 17 THE COURT: If the questions were asked at all about
- 18 Angela.
- MR. SANDMAN: Really, either. I'd be happy if either
- 20 of those questions was answered.
- 21 THE COURT: Let me just try to break this down for
- 22 you.
- Do you know if that was a topic that was asked,
- 24 whether or not Angela inflicted any abuse on the children, in
- 25 her interview or anybody else's interview?

- 1 THE WITNESS: Yes, we did talk about those things,
- 2 whether she disciplined her children, if she spanked them,
- 3 things like that, yes.
- 4 BY MR. SANDMAN:
- 5 Q. Well, you talked to Angela about that, correct?
- 6 A. We talked to Angela. Her sister. I know she had a sister,
- 7 Amanda. The children about those things, as I recall.
- 8 Q. We'll see if we can find those things then, that's fine.
- 9 A. Okay.
- 10 Q. Did Angela Gray tell you that she was afraid to take Rachel
- 11 to the hospital on the evening of May 1st because she was
- 12 personally afraid CPS, Child Protective Services, would allege
- 13 abuse and that she would lose custody of her child?
- 14 A. She did discuss that, yes.
- 15 O. And she took full responsibility of that. She said
- 16 that that was her fear, that was not something Mr. Jones told
- 17 her. She expressed straight up that she was afraid to take
- 18 Rachel to the hospital out of her own concerns with CPS,
- 19 correct?
- 20 A. And she said that he had said that they could go the next
- 21 day.
- 22 Q. They both discussed going the next day.
- 23 A. Right.
- 24 Q. Did Angela Gray physically abuse her children by inflicting
- 25 blows to their stomachs?

- 1 A. Not that I know of.
- 2 Q. Would there be -- would that be something that if you
- 3 conducted a targeted interview of Rachel -- excuse me -- Becky
- 4 or Johnny or the others, is that something you think you might
- 5 want to ask about, since Rachel suffered an injury, a blow to
- 6 her stomach?
- 7 A. I don't recall if we asked that or not, no.
- 8 Q. It would be in the record if you asked about it.
- 9 A. It could be in the statements, yes.
- 10 Q. I'd like you to look at Exhibit 1 at 2294. We better go to
- 11 Page 1 first.
- 12 So this, Ms. Pesquiera, is a May 23 -- excuse me. I am
- 13 looking for the date of the report. This is a May 9, 1994
- 14 report. You don't have to keep it blown up there now. It
- 15 involved an evaluation, psychosocial evaluation, for Rebecca
- 16 Lux. Do you see that up in the upper right-hand corner?
- 17 A. Yes.
- 18 Q. This was done at the University Medical Center?
- 19 A. I see that.
- 20 Q. There was a physician involved by the name of Anna
- 21 Binkiewicz, do you see that?
- 22 A. Yes.
- 23 Q. Are you familiar with Dr. Anna Binkiewicz?
- 24 A. Yes, I am.
- 25 Q. What do you know about her?

- 1 A. I know that she would provide evaluations during that time
- 2 period for Child Protective Services.
- 3 Q. If we could look at the patient interview. She states that
- 4 her mother had hit her all sorts of places. Do you see that?
- 5 That's down about six lines from the bottom of that paragraph.
- 6 A. Yes.
- 7 Q. Were you aware of that as a result of any of the sheriff's
- 8 department interviews?
- 9 A. Not that I recall, no.
- 10 Q. And Becky also stated that there had been bruises resulting
- 11 from this physical abuse, correct?
- 12 A. Yes, it says bruises but no broken skin or bleeding.
- 13 Q. And Rachel had bruises but no broken skin or bleeding,
- 14 didn't she?
- 15 A. She had broken skin and bleeding.
- 16 Q. She had a scalp injury, but on her abdominal area, the rest
- of her body, she had bruises but no broken skin or bleeding,
- 18 correct?
- 19 A. She did have broken skin to her vaginal area and bleeding
- 20 from the vagina.
- 21 Q. Becky goes on to say that she was hit by her mother's open
- 22 hand to her stomach. Do you see that?
- 23 A. Yes.
- 24 Q. Is this something that you would have wanted to have
- 25 investigated further if you had known about it?

- 1 A. That could have been, yes.
- 2 Q. Because you'd probably want to know exactly how hard her
- 3 mother hit her, how often she was hit in the stomach, you'd
- 4 want to know all those things, correct?
- 5 A. Correct.
- 6 Q. And none of those questions were ever asked by the
- 7 sheriff's department?
- 8 A. Not that I know of, no.
- 9 Q. You'd also want to know if anybody saw that happen to
- 10 Rachel at Angela's hand, correct?
- 11 A. Correct.
- 12 Q. Now, let's take a look at Exhibit 32. This is an October
- 13 31, 1994 interview of Donna Marini. We can blow up the first
- 14 13 lines there. You see Mitch Eisenberg is there again. He's
- 15 a representative of the County Attorney's Office, correct?
- 16 A. Correct.
- 17 Q. Do you remember that Ms. Marini was the great aunt of Becky
- 18 and Johnny and Rachel, and that she took custody of Johnny and
- 19 Becky after Rachel died and Angela was arrested?
- 20 A. I vaguely remember that, yes.
- 21 Q. I think it's indicated there, a little further down on the
- 22 page, that she says that she has them. If you go down to Line
- 23 24.
- Do you see there -- I think your recollection is correct,
- 25 she says there she had custody of Angela's children, correct?

- 1 Ms. Pesquiera? Do you see --
- 2 A. (Reading:) I currently have custody.
- 3 Yes, I see that.
- 4 Q. Do you remember that you interviewed Ms. Marini, or someone
- 5 else with your department had a brief interview with her, at
- 6 the hospital on the morning of May 2nd, 1994, the day Rachel
- 7 died?
- 8 A. I don't recall if that was me or who that was.
- 9 Q. Do you know whether anybody followed up with her after she
- 10 took custody of the children to find out whether they had made
- 11 any statements about Mr. Jones being abusive or their mother
- 12 being abusive or anything else?
- 13 A. I don't recall.
- 14 Q. Page 24 of the exhibit. If you could blow up the first 17
- 15 lines.
- 16 Do you see here Ms. Marini is being asked questions about
- 17 whether Becky or Johnny were ever abused? Do you see that? At
- 18 Lines 5 and --
- 19 A. Yes, I see that.
- 20 Q. -- 6? And she reports that she's -- Ms. Marini is learning
- 21 things from the children as a result of the counseling sessions
- 22 she's in.
- 23 A. Yes, she says that.
- 24 Q. And what she's learning -- which I am sure you would have
- 25 been interested to know, Ms. Pesqueira -- is that the children

- 1 are disclosing that they had been slammed up against the wall
- 2 and thrown down stairs, do you see that?
- 3 A. I see that, yes.
- 4 Q. When you decided to close your investigation against Angela
- 5 Gray as being the most likely suspect who could have inflicted
- 6 these injuries on Rachel, would you have liked to have had this
- 7 type of information that the children are disclosing here and
- 8 that Becky disclosed in the earlier statement about being
- 9 struck in the stomach?
- 10 A. Yes, that would have been a good thing to have.
- 11 Q. And if you had or your subordinates actually had engaged in
- 12 carefully targeted forensic interviewing of these children, you
- 13 might have actually learned that before you closed your
- investigation against Ms. Angela Gray, correct?
- 15 A. I would agree that counseling sessions may get something
- 16 like that, but forensic interviews don't always.
- 17 Q. So therefore you don't ever bother to do them because they
- don't always get you information so you don't do them? I'm not
- 19 sure, is that what you mean to say?
- 20 A. No, sir, that's not what I am saying.
- 21 Q. You do them -- when a lead takes you to the necessity of
- 22 doing a forensic interview, you make sure it's done in the most
- 23 appropriate setting that you can devise, correct?
- 24 A. I would agree with that, yes.
- 25 Q. You don't just not try because at the end of the interview

- 1 you may not get information.
- 2 A. If we had that information, yes.
- 3 Q. And then going on, looking at Exhibit 32. Just stay -- if
- 4 you could keep that inflated there. Let's go from Line 12 to
- 5 Line 24.
- 6 The questions went on to ask whether those things, the
- 7 slamming in the walls and the throwing down stairs, whether
- 8 those things were done recently, and Ms. Marini says they were
- 9 done all the time off and on. That's another bit of
- 10 information you didn't have, correct?
- 11 A. Yes.
- 12 Q. Now, the next thing that Ms. Marini is asked is whether,
- 13 from what the children have said, was Barry Jones abusive to
- 14 them? Do you see that at Lines 15 through 17?
- 15 A. I see that, yes.
- 16 Q. And now Ms. Marini has had these kids for about six months,
- 17 they've been told that Mr. Jones has killed their sister, and
- 18 yet in October of 1994, the children are still reporting that
- 19 Mr. Jones never abused them, correct?
- 20 A. I see that they ask is he abusive to them and she says no.
- 21 Q. Rachel had some blood in her ear canal that was seen at the
- 22 time of the autopsy, correct?
- 23 A. I believe so, yes.
- 24 Q. Did you have information near the beginning of your
- 25 investigation in this case that Angela was observed striking

- 1 Rachel on the head?
- 2 A. I don't recall having that information.
- 3 Q. Could we see Exhibit 66, please? This is Pages 1 and 2, I
- 4 think. I'm looking for the Terry Richmond interview.
- 5 MR. SANDMAN: Obviously we're facing another technical
- 6 difficulty that I have created.
- 7 THE COURT: This might be a good time to take a break.
- 8 We're going to take a 10-minute break. Thank you.
- 9 (A recess was taken from 4:24 p.m. to 4:45 p.m.)
- 10 THE COURT: Mr. Sandman, did you get the technical
- 11 difficulties worked out?
- MR. SANDMAN: Yes. Once again it was my fault.
- 13 THE COURT: Okay. That's the story of my life. Go
- 14 ahead. I have the same problems.
- 15 BY MR. SANDMAN:
- 16 Q. We're going to look at Exhibit 66, the May 3rd, 1994
- 17 interview. Page 57. While we're waiting for that to come up,
- 18 before we broke I had asked you if you had any information from
- 19 any sources that Rachel had been struck in the head by her
- 20 mother. Remember we were talking about she had blood on her
- 21 ear. Did you remember anybody reporting that, did you? That
- 22 she had been struck in the head?
- 23 A. That I recall off the top of my head, no.
- 24 Q. When you would get interviews from other people working on
- 25 the investigation, would you review their reports as lead

- 1 detective?
- 2 A. Yes.
- 3 Q. Well, we're looking now at a telephone interview received
- 4 on May 3rd, 1994, from a Terry Richmond. This was an interview
- 5 conducted by Detective Clark. Do you see that?
- 6 A. Correct. I see it.
- 7 Q. If we could blow up the bottom third of the page.
- 8 Do you see there that Mr. Richmond is reporting that Angela
- 9 does the hitting on the kids and he's never seen Barry hit the
- 10 kids?
- 11 A. I see that, yes.
- 12 Q. On the next page, around the third question down, Detective
- 13 Clark asks if he thinks that Angela's hitting was in excess.
- 14 Do you see that? And that would be an appropriate question for
- 15 Detective Clark to ask, right, whether the hitting of the
- 16 children was excessive?
- 17 A. That would be appropriate, yes.
- 18 Q. And Mr. Richmond says that sometimes it was excessive.
- 19 A. He says "sometimes."
- 20 Q. And do you remember who Terry Richmond was in this case?
- 21 A. Yes.
- 22 Q. Who was he?
- 23 A. He was the son to Joyce Richmond. And he had come later on
- 24 to -- later the night of Sunday night, on the 1st, he had
- 25 visited the trailer.

- 1 Q. And then the interview goes on, the next question and
- 2 answer. He says: I've seen her smack her in the face before.
- 3 You know what I mean?
- 4 Do you know who he's talking about there?
- 5 A. I'm assuming that he's referring to Angela, but I don't
- 6 know that by looking at just this part of it.
- 7 Q. Let's go back to Page 1. We better start over. Let's
- 8 start at the bottom third of the page.
- 9 Ms. Pesquiera, do you see there this conversation begins
- 10 with a discussion of Angela, whether Angela strikes her
- 11 children?
- 12 A. He says: Yeah, a couple times spanked them on the --
- 13 spanked them on the butt.
- 14 Q. Can you point to any discussion there about Mr. Jones
- 15 striking Angela?
- 16 A. Mr. Jones striking Angela?
- 17 O. Well, Ms. Pesquiera, you testified --
- 18 A. I don't see it in here, no.
- 19 Q. It's not in there, is it?
- 20 A. I don't see that.
- 21 Q. Then when we go onto the next page and the discussion
- 22 continues at the top of the third page there, continuing to
- 23 discuss Angela's treatment of the children, correct?
- 24 A. Yes, he says: Sometimes I've seen her smack her in the
- 25 face before for -- and then he continues.

- 1 Q. So Mr. Richmond says, "I've seen her smack her," correct?
- 2 A. Correct.
- 3 Q. And so we're obviously not talking about Mr. Jones, who is
- 4 a him, striking anybody, correct?
- 5 A. Yes, sir.
- 6 Q. And when Mr. Richmond reports, "I've seen her smack her,"
- 7 who is he talking about?
- 8 A. Apparently, Angela.
- 9 Q. And who is she striking, do we know?
- 10 A. I don't know that.
- 11 Q. Would you want to follow up on that if you got this report
- 12 and reviewed it?
- 13 A. Yes.
- 14 O. Let's take a look at Exhibit 1 at 1414.
- Now, we were looking at Detective Clark's interview of
- 16 Mr. Richmond on May 3rd, and now we're looking at your
- 17 follow-up interview on May 17, correct? Where you're
- 18 interviewing Mr. Richmond?
- 19 A. Correct.
- 20 Q. I don't want to take the time to go through this 12-page
- 21 document, but the document itself, which runs from Page 1414 to
- 22 Page 1426, should tell us whether you ever followed up with
- 23 Mr. Richmond about his report that Angela had excessively
- 24 physically spanked the children and smacked someone, some her,
- 25 in the face. This interview on the 17th should tell us whether

- 1 you followed up on any of those matters, correct?
- 2 A. It should, yes.
- 3 Q. And if you never asked him a question about that, you would
- 4 expect it would not be in the interview, correct?
- 5 A. If I had asked him, it would be in the interview.
- 6 Q. And if you had not asked him, it would not be.
- 7 A. If I had not asked him then it wouldn't be there.
- 8 Q. Was Rachel at risk from other children in the trailer park?
- 9 A. I don't know that.
- 10 Q. I'd like to have you look at Exhibit 1 at Page 536. I'm
- 11 sorry. Page 518.
- Do you recognize the photograph? This is actually in
- 13 evidence at 65A, at Page 38.
- 14 A. Do I recognize the photograph?
- 15 Q. Yes.
- 16 A. I do.
- 17 Q. This is a photograph of the exterior of Mr. Jones' trailer?
- 18 A. Correct.
- 19 Q. And there's a clothesline there, do you see that?
- 20 A. There's two.
- 21 Q. And Angela reported to you that Becky had strung up Rachel
- 22 on the clothesline?
- 23 A. Had put her up on the clothesline.
- 24 Q. Which one?
- 25 A. I don't know if she "strung" her up. I don't know which

- 1 one.
- 2 Q. And did you ever investigate, through interviews of the
- 3 children, how often that happened?
- 4 A. I don't recall that.
- 5 Q. And do you know how many times Rachel may have fallen off
- 6 that clothesline?
- 7 A. I don't remember, no.
- 8 Q. Now, Angela told you that she knew of one time that Rachel
- 9 had fallen off, correct?
- 10 A. I believe so, yes.
- 11 Q. And you never followed up through interviews of the
- 12 children to see if other similar -- if that happened more than
- once or other similar actions like that would have happened,
- 14 correct?
- 15 A. I don't recall asking, no.
- 16 Q. And you agree that putting a four-year-old up on a
- 17 clothesline, as it's depicted in the photo that we're looking
- 18 at, would place Rachel at risk of harm, perhaps serious harm?
- 19 A. A possibility of harm, yes.
- 20 Q. I want to show you Exhibit 66, at 5154.
- 21 While we're looking for that, do you remember Julian Duran
- 22 and Dawn Kopp? Do you remember interviewing them and being
- 23 informed by them that they were at Stephanie Fleming's on the
- 24 night -- late afternoon, after 5:00 o'clock, when Rachel got
- 25 sick there?

- 1 A. Yes, I do.
- 2 Q. And do you remember that during that interview Ms. Kopp,
- 3 Dawn Kopp, K-o-p-p, that she told you that one of Stephanie's
- 4 children, Patrick, told Stephanie that Ryan hit Rachel in the
- 5 stomach, and that after being hit that Rachel ran into the
- 6 bathroom at the Flemings' and tried to throw up?
- 7 A. I don't recall that.
- 8 Q. Can we see 5161?
- 9 If you could blow up the bottom third of the page.
- THE COURT: This is Exhibit 1?
- 11 MR. SANDMAN: Actually, this is in Exhibit 66.
- 12 THE COURT: And it's admitted?
- 13 MR. SANDMAN: It's admitted. It's actually a
- 14 compilation of sheriff's department interviews and reports
- 15 that's in evidence.
- 16 THE COURT: So it's Exhibit 66, and what page?
- MR. SANDMAN: The interview starts at Page 5154, and
- 18 we're now looking at page 5161.
- 19 THE COURT: This is this witness' interview?
- 20 MR. SANDMAN: An interview of Dawn Kopp and Julian
- 21 Duran.
- 22 BY MR. SANDMAN:
- 23 Q. I think, Ms. Pesquiera, you've testified they were at
- 24 Stephanie Fleming's trailer when Rachel got sick there late on
- 25 Sunday afternoon, after 5:00 o'clock Sunday afternoon, correct?

- 1 A. Correct.
- 2 Q. And at Page 5161, A1, by the way, in this interview is
- 3 Ms. Kopp, correct? That's what the front page of the interview
- 4 shows?
- 5 A. It says Julian Duran at the top.
- 6 MR. SANDMAN: Your Honor, may I approach?
- 7 THE COURT: You may.
- 8 BY MR. SANDMAN:
- 9 Q. Do you see that the first page of your interview that --
- 10 THE COURT: You need to make sure you are near a mic.
- 11 BY MR. SANDMAN:
- 12 Q. Do you the first page of the interview --
- 13 A. Yes, I see.
- 14 Q. You're interviewing them both together, correct?
- 15 A. It says, A, Julian Duran, and Al is Dawn Kopp. Correct.
- 16 Q. So Al is Ms. Kopp.
- Now I want to go back to Page 5161. Do you see there that
- 18 Ms. Kopp is telling you -- you're the one who did this
- 19 interview, right?
- 20 A. Correct.
- 21 Q. She says Stephanie's got a kid, Patrick, the one that
- 22 supposedly has told Stephanie that Ryan hit Rachel on the
- 23 stomach, and that's when she went into the bathroom and tried
- 24 to throw up. Do you see that?
- 25 A. I see that.

- 1 Q. And did you or any of your cohorts ever attempt to
- 2 interview Patrick Thorne about that incident?
- 3 A. Not that I recall.
- 4 Q. And do you know an officer by the name of Susie Dupnik?
- 5 A. I know who Susie Dupnik is.
- 6 Q. Who is Susie Dupnik?
- 7 A. Susie Dupnik was married to the sheriff, Clarence Dupnik.
- 8 Q. Was she a sheriff's department officer?
- 9 A. At one time many, many years ago.
- 10 Q. Did she also work for the County Attorney's Office doing
- 11 criminal investigations for them?
- 12 A. I believe she did for a short period.
- 13 Q. Okay. And do you know if she ever interviewed Patrick
- 14 Thorne about -- that touched on the subject of whether his
- 15 younger brother Ryan had hit him with a stick and caused
- 16 damage, a damaging mark on his chest?
- 17 A. I don't know that.
- MR. SANDMAN: Do we have another copy of Exhibit 83?
- 19 THE COURT: So you might want to start thinking about
- 20 what would be an appropriate place to wrap up for the evening.
- 21 And while we're on the topic, how much longer do you both think
- you're going to need with this witness?
- MR. SANDMAN: Your Honor, I wanted to offer into
- 24 evidence -- well, let me answer your question. I only have a
- 25 few more questions, but I need to try to offer an exhibit as

- 1 part of those questions.
- 2 THE COURT: That's fine.
- 3 MR. BRACCIO: Your Honor, I have probably five to ten
- 4 minutes.
- 5 THE COURT: Well, I may have some questions. So we're
- 6 not going to finish tonight.
- 7 MR. BRACCIO: Sure.
- 8 THE COURT: So what do you think, do you think two
- 9 hours tomorrow is enough?
- 10 MR. SANDMAN: I think I am almost done. So I think
- 11 the answer would be yes, if you have questions and Mr. Braccio
- 12 has a few. I'm happy to stop now and then deal with this
- 13 exhibit, which they have objected to, deal with that in the
- 14 morning.
- 15 THE COURT: So why don't you highlight for me what
- 16 exhibit we're talking about and I can take a look at that this
- 17 evening. Unless, Mr. Braccio, you're withdrawing your
- 18 objection.
- MR. BRACCIO: No, I'm not withdrawing my objection. I
- 20 don't know where this document comes from, this is purported to
- 21 come from another case file --
- THE COURT: I have no idea what it is, what is it?
- MR. SANDMAN: Exhibit 83 is a January 13, 1995
- 24 interview by Susie Dupnik of Patrick Thorne, the older brother,
- 25 who Ms. Kopp said had witnessed Ryan striking Rachel with a

- 1 stick. And in the course of this interview, Patrick reveals a
- 2 mark on his abdomen or chest.
- 3 THE COURT: I'm sorry. This is another child who says
- 4 that somebody else hit him?
- 5 MR. SANDMAN: The same person that was seen striking
- 6 Rachel on May 1st, this individual says that that same
- 7 individual struck him, and he shows a mark.
- 8 THE COURT: When was this interview?
- 9 MR. SANDMAN: It was done in January of 1995. We
- 10 don't know obviously what the mark looks like because nobody
- 11 followed up on --
- 12 THE COURT: Who conducted the interview?
- MR. SANDMAN: Susie Dupnik. Who I think was working
- 14 for the County Attorney's Office. We actually obtained this
- document from the Pima County Attorney's Office file.
- 16 THE COURT: Was it an investigation related to this
- 17 case or a separate investigation?
- 18 MR. SANDMAN: Well, the document was contained in the
- 19 Barry Jones file with the Pima County Attorney's Office. It
- 20 was never disclosed, as far as I can tell, to Mr. Bruner. We
- 21 sort of found it there.
- THE COURT: So it was in the prosecutor's file?
- MR. SANDMAN: In Barry Jones' case.
- 24 THE COURT: So, Mr. Braccio, Mr. Sandman says it was
- 25 in the case file of the prosecutor.

- 1 MR. BRACCIO: I still maintain our objections to the
- 2 foundation and relevance of this document. I don't know where
- 3 they found this document. I don't know in what context these
- 4 statements were made. I don't know what they were
- 5 investigating --
- 6 THE COURT: Let me stop you there.
- 7 MR. BRACCIO: Sure.
- 8 THE COURT: Do you dispute Mr. Sandman's assertion
- 9 that they were found in the prosecutor's files in the Barry
- 10 Jones case?
- MR. BRACCIO: Your Honor, I don't have the information
- 12 to be able to respond to that. I don't know. I understood at
- 13 the beginning of this case they had noticed their investigator
- 14 and their paralegal as a witness in this case, I think we could
- 15 have gotten to the bottom of those statements at that time
- 16 through those witnesses. But here, attempting to introduce
- 17 this document through a witness who has no idea where those
- 18 statements come from or what they are.
- 19 THE COURT: So do you have a witness that can indicate
- where this was found?
- 21 MR. SANDMAN: Yes, sir.
- 22 THE COURT: Well, then you can --
- MR. SANDMAN: Maybe we could --
- 24 THE COURT: -- on that way.
- 25 MR. SANDMAN: We could do that first thing in the

- 1 morning and then I could try to get the exhibit --
- THE COURT: Fine. 9:00 o'clock. How does that sound?
- 3 MR. SANDMAN: Okay.
- 4 THE COURT: Because, I mean, the more we talk, the
- 5 longer this sounds like it's going to take. So we will begin
- 6 at 9:00 o'clock. So you'll put on your witnesses to lay a
- 7 foundation for whatever this document is?
- 8 MR. SANDMAN: Yes.
- 9 THE COURT: Fair enough. You'll have an opportunity,
- 10 Mr. Braccio, to cross-examine.
- MR. BRACCIO: Can I interview the witness before they
- 12 take the stand?
- THE COURT: Do you know who this person is?
- 14 MR. SANDMAN: I believe it would be either Mr. Sowards
- 15 or Ms. Schneider, but I think we could certainly do that
- 16 informally for a few minutes tomorrow morning. I wouldn't have
- 17 a problem --
- 18 THE COURT: I can't imagine there's that many
- 19 questions. You just want an opportunity to know what they're
- 20 going to say?
- MR. BRACCIO: I need to know what where the document
- 22 came from, in what context the statements were made. I don't
- 23 have any of that information.
- 24 THE COURT: Well, neither do I. So you are willing to
- 25 make them available?

- 1 MR. SANDMAN: Yes. I think what they would say is
- 2 they found the document in the Jones file at the Pima County
- 3 Attorney's Office. That's probably all they know about it.
- 4 THE COURT: It may be, but it may forestall the
- 5 objection if that's what they're going to say.
- 6 So let's do this, I still think if we -- if you all
- 7 were to meet here at, say, 9:00, do you want -- are you
- 8 planning to do this this evening or do you want to do this in
- 9 the morning with whoever the witnesses are?
- 10 MR. SANDMAN: I think we can do it right now, as soon
- 11 as we recess. It's not that much information.
- 12 THE COURT: We'll start at 9:00 o'clock tomorrow
- 13 morning.
- 14 Okay. Ma'am, we're going to have to bring you back
- 15 tomorrow.
- 16 THE WITNESS: Yes, I'll be here.
- 17 THE COURT: We will resume at 9:00 o'clock tomorrow
- 18 morning. If you two can get together and have your witnesses
- 19 explain where they found this to Mr. Braccio, and we'll pick it
- 20 up. Then you can put them on the stand first thing in the
- 21 morning. Because we've got this outstanding objection to the
- 22 use of this exhibit with this witness. Okay?
- MR. SANDMAN: Yes, sir.
- THE COURT: Good enough?
- MR. BRACCIO: Good enough.

- 1 THE COURT: Okay.
- 2 Anything else we need to discuss this evening?
- 3 MR. SANDMAN: No, Your Honor.
- 4 THE COURT: Thank you. We will resume tomorrow.
- 5 And then just by way of planning, at 1:00 o'clock we
- 6 have Dr. Howard, or does Dr. Howard land at 1:00 o'clock?
- 7 MR. BRACCIO: No, Dr. Howard lands at noon. I will be
- 8 picking him up, we will come straight here, we can start his
- 9 testimony at 1:00 o'clock.
- 10 THE COURT: So if for some reason things don't go as
- 11 planned, which sometimes happens, when you say you're going to
- 12 be absent to go pick up Dr. Howard, is somebody else going to
- 13 be here to continue to -- because what I don't want to do is
- 14 take a break from working with Detective Pesquiera tomorrow so
- 15 that you can go pick up Dr. Howard; right?
- MR. BRACCIO: Sure.
- 17 THE COURT: So we're powering through tomorrow, and it
- 18 may have to be somebody else is picking up Dr. Howard, is all I
- 19 am suggesting.
- MR. BRACCIO: We'll work that out.
- 21 THE COURT: So we will pick up tomorrow with whoever
- the witnesses are, they are going to lay the foundation for
- 23 Exhibit 83, I think is the number you mentioned, right?
- MR. SANDMAN: Yes, sir.
- 25 THE COURT: If there's nothing else, we'll be in

Τ	recess. Thank you, very much. Have a good evening.
2	(Off the record at 5:08 p.m.)
3	
4	<u>CERTIFICATE</u>
5	
6	I, A. TRACY JAMIESON, do hereby certify that I am
7	duly appointed and qualified to act as an Official Court
8	Reporter for the United States District Court for the District
9	of Arizona.
LO	I FURTHER CERTIFY that the foregoing pages constitute
L1	a full, true and accurate transcript of the proceedings
L2	contained herein, held in the above-entitled cause on the date
L3	specified therein, and that said transcript was prepared by me
L4	Signed in Tucson, Arizona, on the 1st day of
L5	December, 2017.
L 6	
L7	
L8	<u>s/A. Tracy Jamieson</u>
L9	A. Tracy Jamieson, RDR, CRR
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